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CHRISTIAN CENTURY
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SUPPLEMENT

LETTER OF RESIGNATION

OF

JAMES G. McDONALD

**High Commissioner for Refugees (Jewish and Other)
Coming from Germany**

ADDRESSED TO

THE SECRETARY GENERAL OF THE LEAGUE OF NATIONS

With an Annex

containing an analysis of the measures in Germany against "Non-Aryans," and of their effects in creating refugees

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Letter of Resignation

London, December 27th, 1935.

THE SECRETARY GENERAL OF THE
LEAGUE OF NATIONS,
GENEVA, SWITZERLAND.

SIR,

On October 26th, 1933, the President of the Council of the League of Nations did me the honour to appoint me High Commissioner for Refugees (Jewish and Other) Coming from Germany, to "negotiate and direct" the "international collaboration" necessary to solve the "economic, financial and social problem" of the refugees. I hereby beg to submit through you to the Council of the League my resignation from this office, to become effective as from December 31st, 1935.

2. In the period of over two years since the establishment of the office, conditions in Germany which create refugees have developed so catastrophically that a reconsideration by the League of Nations of the entire situation is essential. The legislation and administrative and Party action against "non-Aryans" were steadily intensified, and culminated in the autumn of 1935 when a series of new laws and decrees initiated a fresh wave of repression and persecution of a character which was not envisaged in 1933.

The intensified persecution in Germany threatens the pauperization or exile of hundreds of thousands of Germans—men, women and children—not only Jews but also the "non-Aryan" Christians treated as Jews, and Protestants and Catholics who in obedience to their faith and conscience dare to resist the absolute will of the National Socialist State.

3. Apart from all questions of principle and of religious persecution, one portentous fact confronts the community of states. More than half a million persons, against whom no charge can be made except that they are not what the National Socialists choose to regard as "Nordic", are being crushed. They cannot escape oppression by any act of their own free-will, for what has been called "the membership of non-Aryan race" cannot be changed or kept in abeyance.

Tens of thousands are to-day anxiously seeking ways to flee abroad; but except for those prepared to sacrifice the whole or greater part of their savings, the official restrictions on export of capital effectively bar the road to escape, and the doors of most countries are closed against impoverished fugitives. Nevertheless, if the present pressure is not relieved, it is inconceivable that those who can flee will remain within Germany.

The task of saving these victims calls for renewed efforts of the philanthropic bodies. The private organizations, Jewish and Christian, may be expected to do their part if the Governments, acting through the League, make possible a solution. But in the new circumstances it will not be enough to continue the activities on behalf of those who flee from the Reich. Efforts must be made to remove or mitigate the causes which create German refugees. This could not have been any part of the work of the High Commissioner's office; nor, presumably, can it be a function of the body to which the League may decide to entrust future administrative activities on behalf of the refugees. It is a political function, which properly belongs to the League itself.

4. At the last meeting, on October 16th, 1935, of the Permanent Committee of the Governing Body of the High Commission, at which my intention to resign was fully discussed, action was taken to liquidate the office of the High Commissioner at the end of January, 1936, or sooner if before that date the Council of the League had made other provision for the co-ordination of the activities on behalf of the refugees coming from Germany. It was the expectation of the Permanent Committee that the Committee of Experts provided for by the Assembly of 1935, to study the re-organization of the activities on behalf of the "German" and of the "Nansen" refugees, would complete its investigations in time to present a plan for consideration, and it was hoped for action, by the Council at its meeting in January, 1936.

It has been the sense of the Governing Body that the work of assistance in the countries of refuge could be

better carried forward by an organization directly under the authority of the League. It is now clear that the effectiveness of the High Commissioner's efforts was weakened from the beginning by the compromise which was agreed upon at the time his office was set up—that is, the decision to separate it definitely from the League. This compromise was accepted in order to avoid the veto of Germany, which was then an active member of the League.

5. Progress has been made during the last three years in settling the refugees from Germany. Of the more than 80,000 who have already left the Reich, approximately three-fourths have now found new homes—more than half of these in Palestine—or have been repatriated to their countries of origin. This accomplishment has been primarily the work of the refugees themselves and of the philanthropic organizations —Jewish and Christian—whose devoted labours have been ceaselessly carried on in many parts of the world. Probably not more than 15,000 refugees now remain unplaced. (An account of the work done for the refugees since April, 1933, is being published.)

6. The care and the settlement of these remaining thousands of refugees could and would be borne by the already heavily burdened private organizations, were they not fearful that the number of refugees may be increased many times by new flights from Germany.

The facts which arouse these apprehensions are indisputable. They are evidenced clearly in the German laws, decrees, judicial decisions and Party pronouncements and practices during the last two years. The culmination of these attacks on the Jews, the Christian "non-Aryans", and the political and religious dissenters was the new legislation announced at the Party Congress at Nuremberg last September. The core of that enactment was the law limiting citizenship to those who are "of German or cognate blood", and who also conform to the National Socialist conception of loyalty to the State. As the direct result in Germany not only the Jews, who now number about 435,000, but also tens of thousands of Christian "non-Aryans" who are classified as Jews, lost their citizenship, were disfranchised, and made ineligible to hold public office. Indirectly, through this new law, a constitutional basis was laid for unrestricted discriminations against all those whom the Party may wish to penalize.

The denationalization by the German Government of thousands of German citizens has added to the hardships both of those remaining in Germany and of the refugees, and is an increasing burden on States which have admitted the refugees while in possession of German nationality.

7. Relentlessly the Jews and "non-Aryans" are excluded from all public offices, from the exercise of the liberal professions, and from any part in the cultural and intellectual life of Germany. Ostracized from social relations with "Aryans", they are subjected to every kind of humiliation. Neither sex nor age exempts them from discrimination. Even the Jewish and "non-Aryan" children do not escape cruel forms of segregation and persecution. In Party publications, directly sponsored by the Government, "Aryan" children are stirred to hate the Jews and the Christian "non-Aryans", to spy upon them and to attack them, and to incite their own parents to extirpate the Jews altogether.

8. It is being made increasingly difficult for Jews and "non-Aryans" in Germany to sustain life. Condemned to segregation within the four corners of the legal and social Ghetto which has now closed upon them, they are increasingly prevented from earning their living. Indeed more than half of the Jews remaining in Germany have already been deprived of their livelihood. In many parts of the country there is a systematic attempt at starvation of the Jewish population. In no field of economic activity is there any security whatsoever. For some time it has been impossible for Jewish business men and shopkeepers to carry on their trades in small towns. The campaign against any dealings with Jews is now systematically prosecuted in the larger towns. Despite the restrictions upon migration from the provinces into the few largest cities where Jewish economic activity is not yet completely excluded, the Jews are fleeing to those cities because there only can they hope to escape, at least for a time, from the more brutal forms of persecution.

This influx has exhausted already the resources of the Jewish philanthropic and educational institutions in Germany. The victims of the terrorism are being driven to the point where, in utter anguish and despair, they may burst the frontiers in fresh waves of refugees.

9. Again, as so often during their long heroic and tragic history, the Jewish people are used as the scapegoat for political and partisan purposes. The National Socialists level against them charges of the most outrageous and untenable kind. They ignore all of the facts of the continuous loyalty of the Jews in Germany: for example, during the Empire when Jews helped to unify Germany and to make it strong; during the War when a percentage of Jewish youth as high as that of any other religious community in the Reich gave their lives for the Fatherland, and Jewish scientists and men of affairs helped so notably to enable Germany to prolong the struggle; and under the Republic when Jewish leaders aided in saving Germany from some of the worst effects of defeat. Instead, it has been found useful to attribute to the Jews the responsibility for the misery and dejection which the German people suffered during the last years of the War and the decade that followed. Though less than a one-hundredth part of the total population, the Jews are held responsible for all the adversity which the German people had to undergo. As in the Middle Ages, when they were massacred and expelled from German States as the cause of the Black Death, so to-day they are eliminated from the economic and cultural life of Germany and degraded on the ground that they were the cause of the German humiliation. So far does this hatred extend that even the Jewish war veterans who fought and were wounded in the front line trenches have been forced from their positions in the public services, and the names of the Jewish war dead may no longer be engraved on war memorials.

10. The attitude of the German Government is

based not only on the theory of "Nordic race" supremacy and the desire to eliminate "foreign racial" elements from the life of the country; it rests also on the conception of the absolute subordination of the individual to the State. An influential section of the Party is actively promoting a revival of neo-Paganism which sets itself against both the Old Testament and parts of the New Testament. The conceptions of "blood, race and soil", propagated with fanatical enthusiasm, menace not alone the Jews, but all those who remain defiantly loyal to the old ideals of religious and individual freedom.

Party leaders violently attack religious freedom in the State, and threaten the Church with political domination. Outstanding thinkers of the two great Christian communities in Germany and abroad raise their voices in protest against this attack which threatens to increase the number of refugees.

11. The developments since 1933, and in particular those following the Nuremberg legislation, call for fresh collective action in regard to the problem created by persecution in Germany. The moral authority of the League of Nations and of States Members of the League must be directed towards a determined appeal to the German Government in the name of humanity and of the principles of the public law of Europe. They must ask for a modification of policies which constitute a source of unrest and perplexity in the world, a challenge to the conscience of mankind, and a menace to the legitimate interests of the States affected by the immigration of German refugees.

12. Apart from the Upper Silesia Convention of May, 1922, Germany does not appear to be expressly bound by a treaty obligation providing for equal citizenship of racial, religious or linguistic minorities. But the principle of respect for the rights of minorities has been during the last three centuries hardening into an obligation of the public law of Europe. That principle was recognized in some of the most important international instruments of the nineteenth century. I may refer to the provisions of the Congress of Vienna, the treaty of guarantee following upon the Union of Belgium and Holland, the collective recognition of the independence of Greece, the creation of the autonomous principalities of Moldavia and Wallachia. It was affirmed at the Congress of Berlin in 1878 in relation to newly recognized states. It was deliberately reaffirmed in the Peace Settlement of 1919 and in a series of special minorities treaties as a vital condition both of international justice and of the preservation of the peace of the world. In the case of newly-created states its express recognition constituted a condition of admission to the League of Nations.

Neither was the attitude of Germany in this matter open to any doubt. During the Peace Conference, the German Delegation, in urging the adoption of the principle of protection of minorities for the German population in the territories detached from Germany, declared spontaneously that "Germany on her part is resolved to treat minorities of alien origin in her territories according to the same principles." The Allied and Associated Powers expressly took note of that declaration. From the moment of her admission to the League Germany took the lead in securing the effectiveness of the principles of international protection of minorities.

13. The Assembly of the League in 1922 adopted a resolution which expressed the hope that "states not bound by specific legal obligations in the matter of minorities will nevertheless observe in the treatment of their own minorities at least as high a standard of justice and toleration as is required by the treaties in question." The Assembly in 1933, when considering the question of the persecution of Jews in Germany in connection with the discussion on minorities, reaffirmed that resolution; and in order to dispel doubts whether it applied to the Jews in Germany, voted, with the single dissent of Germany, in favour of a further resolution that the principle "must be applied without exception to all classes of nationals of a state which differ from the majority of the population in race, language or religion."

The German Jews, although not claiming or desiring to be a minority, are within the scope of this principle because, as was stated at the Assembly, as soon as there is legal discrimination, a minority exists within the meaning of modern law.

14. It is not within my province to state to what extent the practice in this matter of the community of nations in the last hundred years and of the League of Nations has become a rule of customary international law; neither am I called upon to judge how far the declarations and the conduct of Germany prior to 1933 are in themselves sufficient to establish legal presumptions. But both, I believe, are sufficient to establish an appeal to those broad considerations of humanity and of international peace which are the basis of the public law of Europe in the matter of racial and religious minorities.

The growing sufferings of the persecuted minority in Germany and the menace of the growing exodus call for friendly but firm intercession with the German Government, by all pacific means, on the part of the League of Nations, of its Member-States and other members of the community of nations.

Pity and reason alike must inspire the hope that intercession will meet with response. Without such response, the problems caused by the persecution of the Jews and the "non-Aryans" will not be solved by philanthropic action, but will continue to constitute a danger to international peace and a source of injury to the legitimate interests of other states.

15. The efforts of the private organizations and of any League organization for refugees can only mitigate a problem of growing gravity and complexity. In the present economic conditions of the world, the European States, and even those overseas, have only a limited power of absorption of refugees. The problem must be tackled at its source if disaster is to be avoided.

This is the function of the League, which is essentially an association of states for the consideration of matters of common concern. The Covenant empowers the Council and the Assembly to deal with any matter within the sphere of activity of the League or affecting

the peace of the world. The effort of the League to ensure respect for human personality, when not grounded on express provisions of the Covenant or international treaties, has a sure foundation in the fact that the protection of the individual from racial and religious intolerance is a vital condition of international peace and security.

16. I am appending to this letter a comprehensive analysis of the German legislation, administrative decrees and jurisprudence, as well as of their effects on the problem of refugees.

17. I feel bound to conclude this letter on a personal note. Prior to my appointment as High Commissioner for Refugees Coming from Germany, and in particular during the fourteen years following the War, I gave in my former office frequent and tangible proof of my concern that justice be done to the German people. But convinced as I am that desperate suffering in the countries adjacent to Germany, and an even more terrible human calamity within the German frontiers, are inevitable unless present tendencies in the Reich are checked or reversed, I cannot remain silent. I am convinced that it is the duty of the High Commissioner for German Refugees, in tendering his resignation, to express an opinion on the essential elements of the task with which the Council of the League entrusted him. When domestic policies threaten the demoralization and exile of hundreds of thousands of human beings, considerations of diplomatic correctness must yield to those of common humanity. I should be recreant if I did not call attention to the actual situation, and plead that world opinion, acting through the League and its Member-States and other countries, move to avert the existing and impending tragedies.

I have the honour to be, Sir,

Your obedient servant,

JAMES G. McDONALD,

High Commissioner for Refugees
(Jewish and Other) Coming from Germany.

Annex

Introduction

There was no German refugee problem before 1933. It is the general, and particularly the racial policy of the German Government which has created that problem, and it is the persistent pursuit of that policy which aggravates it and renders its liquidation well-nigh impossible. For three years this policy has found expression in legislation, in decisions of the courts, in the interpretation and application of the law by local officials and in extra-legal measures taken by the National Socialist Party and its leaders who direct the central and local governments of the country. The result has been to deprive hundreds of thousands of German citizens of all standing in the community and even of the means of livelihood.

More than 80,000 persons were obliged to leave Germany during the past three years and to seek refuge abroad. The vast majority of those affected, however, remained in their native land in the hope that the programme of racial discrimination would be abandoned or moderated. This hope has been dispelled by the action of the Reichstag which met in extraordinary session at Nuremberg on September 15th, 1935, and approved legislation which withdraws citizenship from persons of "non-German blood". The new law reads:

§ 1

"1. A German national (*Staatsangehöriger*) is one who belongs to the protective association of the German Reich to which he is therefore especially pledged.

"2. Nationality (*Staatsangehörigkeit*) shall be acquired in accordance with the prescriptions of the Reich and State Nationality Law.

§ 2

"1. He only is a citizen who is a national (*Staatsangehöriger*) of German or cognate blood and has shown by his behaviour that he is willing and fit loyally to serve the German people and Reich.

"2. Reich citizenship shall be acquired by the bestowal of a letter of patent of Reich citizenship.

"3. A Reich citizen is the sole bearer of full political rights in accordance with the law.

§ 3

"The Reich Minister of the Interior, in co-operation with the Deputy of the Leader, shall issue the legal and administrative stipulations for the execution and completion of the law."[1]

Even more ominous was the declaration of the German Chancellor to the Reichstag that the new legislation constituted an attempt of the Government at legal regulation of the Jewish problem so as to enable "the German people to find tolerable relations with the Jewish people". Should, however, the attempt at legal regulation fail, the Chancellor continued, then the problem must "be turned over to the National Socialist Party for a final solution".[2]

The new legislation has altered the entire complexion of the refugee problem. At least half a million people have been deprived of political rights, their civil status has become that of "guests or wards of the State", and a threat of even more drastic action against them has been pronounced before the Reichstag. It is inevitable that these outcasts should seek to emigrate from the land which has disowned them. They have become a reservoir from which more and ever more refugees will flow into neighbouring lands. It is therefore imperative to examine the fundamental cause of the refugee problem, namely the racial policy of the National Socialist Government.

A considerable number of persons have suffered persecution or been forced to emigrate for "political" reasons. They aroused the displeasure of the new rulers of Germany because of hostility to National Socialism prior to 1933, when the latter strove to seize power, or because they disregarded the doctrines of a strident nationalism and sought to further international co-operation and peace. Far more numerous, however, have been the victims of the "racial" policy of the new Germany,—a policy which requires elucidation.

The "racial" policy is not a passing phenomenon. As far back as February, 1920, the National Socialist Party proposed in its programme that:

> "None but members of the nation may be citizens of the State. None but those of German blood, whatever their creed, may be members of the nation. No Jew, therefore, may be a member of the nation."

This definition would deny German citizenship to persons of Jewish or of other "non-German blood". The National Socialist programme did not stop there. It demanded that

> "Anyone who is not a citizen of the State may live in Germany only as a guest and must be regarded as being subject to foreign laws."

Thus having proposed the reduction of all German citizens of Jewish ancestry to an inferior status, the National Socialist programme found no difficulty in urging the denial of all political rights to them, and, in particular, their exclusion from public employment.

This, however, has not been the final objective of the National Socialists with respect to the German Jews. They demanded in their programme the immediate expulsion of "all non-Germans", who entered Germany subsequent to August 2nd, 1914, and had in view a similar fate for all persons of Jewish origin, no matter how long they or their ancestors had lived in the country, or how devoted and useful they had been to the Fatherland. Point 7 of their 1920 programme reads:

> "We demand that the State shall make it its first duty to promote the industry and livelihood of citizens of the State. If it is not possible to nourish the entire population of the State, foreign nationals (non-citizens of the State) *must be excluded from the Reich.*" [Italics ours.]

In brief, then, the objective of the National Socialists, the

[1] *Reichsgesetzblatt,* 1935, p. 1146. The Reichstag sanctioned also the "Law for the Protection of German Blood and Honour" which prohibited intermarriage between Jews and German "nationals of German or cognate blood". *Ibid.,* pp. 1146-7.

[2] See *Westfälische Landeszeitung Rote Erde,* September 16th, 1935.

present rulers of Germany, has been threefold: (1) to deprive all who have displeased them, and particularly Germans of Jewish ancestry, of citizenship and political rights; (2) to eliminate them from the political, cultural, social and economic life of the country; and (3) to force them to emigrate. This objective has been pursued relentlessly by the present Government of Germany without regard either for the human suffering occasioned by their policies or for the welfare of the states in whose domains the victims have been obliged to seek refuge.

Chapter I

DISCRIMINATORY LEGISLATION: THE "ARYAN" DECREES

Herr Hitler, the leader of the National Socialists, became German Chancellor on January 30th, 1933, but no legal action was taken immediately to realize the programme of the Party. The National Socialist leaders felt free to act only after the Reichstag, the deliberative and representative parliament of Germany, had been prorogued on March 23rd, 1933, and they had assumed dictatorial power. Then, however, decrees followed each other in rapid succession, and within a relatively short time liberals, pacifists, Jews and Christians of Jewish ancestry, were swept from public office, from Government employment, from the social services, and from the liberal professions.

The foundation of the entire structure of National Socialist legislative discrimination consists of sections 3 and 4 of the Law for the Restoration of the Professional Civil Service, issued on April 7th, 1933. Section 4 relating to "political" opponents prescribes that

> "Officials who, judged from their previous activity, do not warrant that they will always unreservedly exert themselves for their national country, may be dismissed. . . ."[1]

and subsequent decrees applying this test to professions other than the civil service, have made little effort to define or limit the meaning of this sweeping provision.

To be sure, a clause has generally been inserted designating as "politically unreliable" those who engaged in communist or marxist activities.[2] Enquiries have also been made as to whether persons in Government employ belonged to organizations such as the Union of Republican Judges, the Union of Republican Officials, the League of the Rights of Man, the Iron Front, the Reichsbanner Black-Red-Gold, and the like.[3] But vague formulae have been preferred: to be a newspaper editor one has to "possess the qualities required for a task involving the exercise of a spiritual influence upon public opinion"; for cultural pursuits, the necessary "reliability and capacity" are indispensable. Moreover,

> "Candidates [for admission to practice as dentists with the 'National Health Insurance Service'] may not be admitted if there exist some important personal reasons against their admission."[4]

A strict definition of terms might provide a legal refuge for those who are regarded as politically undesirable. As it is, those who possess dictatorial power in Germany are enabled "legally" to proscribe practically anyone who momentarily displeases them.

It is difficult to determine the exact number of refugees and those who suffer discrimination within Germany, who owe their plight to real or imagined hostility to National Socialism. The overwhelming majority, however, are not of this category. A multitude of men, women and children, have been humiliated and impoverished, or compelled to seek refuge abroad for no other reason than their "racial" affinities. They have been guilty of no political, moral, or any other kind of heterodoxy. Their offence is merely the fact that they are "non-Aryans",—an offence over which they have no control and to rectify which they can do nothing. It is, therefore, to this group, the most numerous element among the refugees, that particular attention must be devoted.

It is generally believed that the Jews are the only victims of this form of discrimination, but a mere glance at the Law for the Restoration of the Professional Civil Service indicates that such is not the case. Article 3, the basis of the "racial" disabilities, commences thus:

> "(1) Officials who are of non-Aryan descent, are to be retired (see section 8); as regards the honorary officials they are to be discharged from office."

It will be observed that the law speaks not solely of Jews but of "non-Aryans", a more comprehensive term which has disqualified numerous persons who are Christians and have had no relations with the Jewish community. To understand this action we must recall the fact that numerous German Jews abandoned Judaism and espoused Christianity during the course of the nineteenth and early twentieth centuries. Even more numerous, perhaps, was the class of Jews who had intermarried with German Protestants or Catholics and they, or their children, had severed all affiliations with the Jewish group and had completely identified themselves with the Christian community. These persons regarded themselves and were regarded by others as Christians. But the National Socialist leaders have shown little respect for traditional Christianity. They have sought to render even faith subservient to the purposes of an exclusive racialism. Therefore, legislation specifically directed against Jews would not have answered their purposes. It would have reached only the five or six hundred thousand Jews of Germany and not the additional hundreds of thousands[5] of German Christians who are descended from Jewish stock. The National Socialists would include them all, those of the Christian as well as of the Jewish faith. For that purpose, "non-Aryan" appeared more satisfactory because it was more comprehensive and more in consonance with the "racial" theory.

But who is a "non-Aryan"? This question proved troublesome and the National Socialist legislators were compelled to issue a number of decrees defining arbitrarily this vague and elusive concept. First it was decreed that

> "A non-Aryan is one who is descended from non-Aryan, particularly Jewish parents or grandparents. It suffices if one parent or one grandparent is non-Aryan. This obtains

[1] *Reichsgesetzblatt*, 1933, I, p. 175.

[2] See, for example, *Preussische Gesetzsammlung*, 1933, p. 209, § 3; *Reichsgesetzblatt*, 1933, I, pp. 257 § 2, 188 § 3, 222 § 1, 518.

[3] See *Reichsgesetzblatt*, 1933, I, pp. 195, 245.

[4] *Reichsgesetzblatt*, 1933, I, pp. 541 § 27, 713 § 5 (7). See also pp. 483 § 3, 797 § 10.

[5] Estimates of the number of "non-Aryans" vary from two hundred thousand to several millions. For a careful analysis of this question, see Wellisch, "Die Anzahl der Menschen Jüdischer Abstammung," *Zeitschrift für Rassenkunde und ihre Nachbargebiete*, Stuttgart, 1935, II, heft 2, pp. 198-203.

especially if one parent or one grandparent belonged to the Jewish faith."[6]

This definition was comprehensive enough, but it was soon discovered that some people had been left in doubt as to the purity of their "Aryanism". The Minister of the Interior thereupon ordained that illegitimate descent from a non-Aryan did not remove the stigma which entailed an inferior status, and that "Aryanism" could not be acquired or assumed through adoption. On the other hand, an "Aryan" lost his privileged position if he married a "non-Aryan".[7]

It has never been made clear why racial assimilation is achieved in three generations. Yet, the "parent or grandparent clause" possessed the virtue of definiteness and enabled all persons whose two parents and four grandparents had not been Jews to feel secure from molestation on racial grounds. New legislation, however, soon disclosed that the search for traces of "Jewish blood" was to be extended further into the past. The law regulating peasant holdings (September 29th, 1933) no longer spoke of parents or grandparents but declared that:

> "A person is not considered as of German or cognate blood if his paternal or maternal ancestors have Jewish or coloured blood in their veins,"

and then went on to fix the "first of January, 1800" as the day beyond which probing would be unnecessary.[8] A new regulation concerning the press which was issued in April, 1935,[9] likewise barred from the publishing business all persons who could not prove "their own Aryan descent and that of their consorts . . . up to 1800."

The decision to disqualify as "non-Aryans" even those whose grandparents had not been Jews, provided some Jewish ancestor could be discovered to have lived after January 1st, 1800, undoubtedly augmented the number of "non-Aryans" subject to discrimination. The German Government has not disclosed exactly how many Christians, in addition to the five or six hundred thousand Jews, were thus relegated to an inferior status by the "parent and grandparent clause" and by the decision to discriminate against the descendants of persons who had abandoned the Jewish faith subsequent to January 1st, 1800.[10] Nevertheless, the far-reaching character of these provisions may be observed from the genealogical tables in the next column.

It should be noted that for the sake of simplicity the genealogical tables limit the issue of each marriage to *one* child. More often several children resulted and married into different non-Jewish families, and with each succeeding generation the mixation of "non-Aryans" with "Aryans" was multiplied. The ramifications of the "Aryan" test must extend far indeed when one considers that each baptism and each intermarriage tainted with "non-Aryanism" all the descendants for at least two or three generations, possibly for more if the test of January 1st, 1800 is applied.

Moreover, National Socialist legislation does not consider a person free of the stigma of "non-Aryanism" unless proved otherwise. The onus of proof is thrown upon the individual who desires to hold public office, engage in a liberal profession, or contribute to the intellectual and cultural life of the country. With respect to office-holders who have fallen under

I

Descent from Baptized Jews

Baptized Jew—marries—Baptized Jewess

1st generation	"Non-Aryan" because parents and grandparents were Jews	child—(m. "Aryan")
2nd generation	"Non-Aryan" because two grandparents were Jews	grandchild—(m. "Aryan")
3rd generation	"Non-Aryan" because one grandparent, descended of Jewish parents, was considered a Jew	great-grandchild—(m. "Aryan")
4th generation	"Aryan"	great-great-grandchild

II

Descent from Mixed Marriage

Jew—marries—"Aryan"

1st generation	"Non-Aryan" because one parent and two grandparents were Jews	child—(m. "Aryan")
2nd generation	"Non-Aryan" because one grandparent was a Jew	grandchild—(m. "Aryan")
3rd generation	"Aryan"	great-grandchild[11]

[6] Decree of April 11th, 1933, *Reichsgesetzblatt,* 1933, I, p. 195.
[7] Decree of September 28th, 1933, *Reichsgesetzblatt,* 1933, I, p. 678.
[8] *Reichsgesetzblatt,* 1933, I, p. 685 § 13.
[9] *Frankfurter Zeitung,* April 26th, 1935.
[10] The "Law on Citizenship and on the Protection of the Purity of German Blood" which was issued on November 15th, 1935, does not define the term "non-Aryan". Moreover, paragraph 6 specifically states that previous laws respecting the "purity of blood" remain in force. See *Völkischer Beobachter,* November 16th, 1935.

[11] For the purposes of the laws regulating the publishing business and peasant holdings (see column 1, this page) the great-great-grandchild of Table I and the great-grandchild of Table II would not be considered "Aryan" if the mixed marriage or baptism had occurred after January 1st, 1800.

suspicion, the Prussian Ministry of Justice has summarily ordered that officials whose "Aryan" descent is questioned by "reliable sources", especially by associations of a national character, "must within three days, clarify their status",[12] and failure to produce the requisite evidence has resulted in dismissal from office.

Nor did the Government authorities wait until suspicion had been cast upon an individual. Officials, lawyers, doctors, and those engaged in educational and cultural work were ordered to submit proof in the form of documents, such as birth and marriage certificates, that they and their wives were of "Aryan" descent. Even those who had held office uninterruptedly for nearly twenty years (since August 1st, 1914) and whose "Aryan" origin had not been questioned, must make the following statement:

> "I declare officially herewith: I do not know of any circumstance—despite careful scrutiny—that may justify the presumption that I am not of Aryan descent; in particular, none of my paternal or maternal parents, or grandparents, was at any time of the Jewish faith.
>
> "I am fully aware of the fact that I expose myself to prosecution and dismissal if this declaration proves untrue."[13]

The State even provided for a "racial expert" to delve into the obscurities of "Aryan" antecedents and resolve doubtful cases.

> "If Aryan descent is doubtful [read a decree of the Reich Ministry of the Interior] an opinion is to be obtained from the expert for racial research attached to the Minister of the Interior."[14]

Thus, the aid of "scientific research" has been enlisted to make certain that not even a person of doubtful "Aryanism" would remain to contaminate the life of the new Germany.

Application to the Government Service

This was no theoretic question. The "Aryan" test was established to eliminate Jews, and Christians of Jewish ancestry, from participation in the life of the country. The first to be affected were those in the Government service against whom the basic Law for the Restoration of the Professional Civil Service was directed. This called for the elimination of officials of "non-Aryan" descent, and the term official was broadly defined:

> "According to this law the following are to be regarded as officials: immediate and mediate functionaries of the Reich, immediate and mediate functionaries of the States, and functionaries of the Communes and Unions of Communes, servants of public law corporations, as well as officers of similar institutions and establishments. . . . These provisions are also to be applied to functionaries of social insurance bodies who have the status of officials."[15]

It was the intent of the law to remove from Government employ all persons of "non-Aryan" descent (with certain exceptions)[16] whether occupying political office, administrative positions, honorary posts, or engaged in manual and menial labour. This objective was achieved by means of a series of decrees and ordinances which clarified and amplified the sweeping provisions of the basic law. The ban fell upon the "non-Aryan" members of the instructional staffs of all public educational institutions; upon the officials of judicial tribunals of every description; upon tax assessors, consultants and notaries; upon officials and employees of the Imperial Railway Administration, of municipal theatres, gas and electricity works, of public banks and insurance companies, of the postal service and public welfare institutions, and of other public or semi-public agencies; and upon police officers and civil employees of the army.[17] The only branch of the service which was unaffected by the general legislation was the military; ". . . officers, health officers, veterinary officers, non-commissioned officers, and soldiers" of the army were expressly exempted from the "Aryan" provisions of the laws respecting Government employment. It must not be supposed, however, that the National Socialist leaders were unconcerned about the "racial purity" of the most honourable institution of the German State. It is more likely that the effectiveness of the army would have suffered from the immediate retirement of many devoted and efficient "non-Aryans", and the army chiefs dared to insist that the welfare of the army should take precedence over the racial theories of the National Socialists. Subsequently, however (in May, 1935), when the new Conscription Law was issued, the "Aryan" test was applied to the army also. The Conscription Law provided that

> "(1) Aryan descent is a pre-supposition for active military service. . . .
>
> "(3) Only members of Aryan descent may be superiors in the army.
>
> "(4) Members of the army and of the reserve of Aryan descent are forbidden to marry persons of non-Aryan descent. Contraventions bring about the loss of any higher military rank."[18]

One provision of the new Conscription Law merits special attention, namely, "The service of non-Aryans during a war is reserved for special regulation." Man-power in war is a compelling necessity and it might prove desirable to call upon the "non-Aryans", untrained though they be, to defend the Fatherland which disowned and humiliated them.

Application to the Professions

The National Socialist legislators did not stop with the elimination of "non-Aryans" (and incidentally also of "Aryans" whose opinions they disliked), from Government service. They immediately reached out to "purge" the liberal professions. It might have been expected that the "Aryan" test would be applied to judges, arbitrators in civil and labour courts, jurors and court officials, because they were employees of the State. But the new legislation of Germany went further and declared that

> "The admission of lawers who, according to the Law for the Restoration of the Professional Civil Service . . . are of non-Aryan descent, may be cancelled until September 30th, 1933. . . .
>
> "Admission to the bar may be refused to persons who . . . are of non-Aryan descent, even if there exists none of

[12] *Justizministerialblatt,* 1935, I, p. 160.
[13] Decree of May 23rd, 1933. *Justizministerialblatt,* p. 160.
[14] *Reichsgesetzblatt,* 1933, I, p. 575. See also pp. 195, 222, 541; *Justizministerialblatt,* 1933, pp. 160, 164; *Deutsche Justiz,* 1933, p. 729.
[15] Law of April 7th, 1933, *Reichsgesetzblatt,* 1933, I, p. 175.
[16] See pages 110, 111.
[17] *Reichsgesetzblatt,* 1933, I, pp. 245, 219, 257, 277, 397; *Justizministerialblatt,* p. 151.
[18] *Völkischer Beobachter,* May 23rd, 1935.

the reasons enumerated in the Regulations for Lawyers (*Rechtsanwaltsordnung*). . . ."[19]

This enactment made the practice of law impossible for "non-Aryans"[20] and additional laws and ministerial decrees were issued to close every branch of the profession to the proscribed group. Civil, criminal and patent lawyers; counsellors in administrative law and in social insurance; consultants on tax appeals and on cases brought before the labour courts; and candidates in training for the legal profession must all establish the pure "Aryanism" of their ancestry (and the acceptability of their political and social views) or be driven from the bar and the courts. It mattered not that professional and personal conduct had been beyond reproach, or that a lawyer had been an honoured and respected member of his profession. If he could not meet or subscribe to the narrow and exclusive standard of the National Socialists his usefulness to the community was at an end.[21]

Even more startling was the application of racial and political tests to medicine and dentistry. German physicians and dentists were not, like the lawyers, driven at one stroke from their professions. Their elimination was achieved in a manner more ingenious, but in the long run no less effective. In the first place, provision was made that no *new* "non-Aryan" physicians or dentists be certified. An announcement made by the Rector of the University of Berlin read:

> "The Prussian Minister of Public Instruction has announced that non-Aryan medical students cannot expect to receive authorization to practice. But, according to present prescriptions, diplomas in medicine and dentistry may be granted only to foreign nationals, regardless of the question whether and when a German official authorization to practice is granted";

and the Rector went on to advise that

> "the only recourse left to candidates of German nationality of non-Aryan descent, if they desire to obtain their diploma in medicine before securing authorization to practice as physician (dentist) in Germany, is to renounce German nationality . . . ."[22]

Physicians and dentists already in practice were not prevented by law from pursuing their callings, but, through expulsion from the National (and private) Health Insurance Service, they were deprived of their most numerous clientele and basic source of income. A decree of the Reich Minister of Labour read:

> "The work of panel doctors of non-Aryan descent, as well as of panel doctors who engaged in activities of a communistic nature, must cease. Further admission of such physicians as panel doctors to the National Health Insurance Service is forbidden."

Similarly,

> "The work of dentists and dental technicians in connection with the National Health Insurance Service . . . must cease if they are of non-Aryan descent or if they displayed communistic tendencies; such dentists and technicians are henceforth excluded from the practice."[23]

These laws were put into effect by a number of decrees, the most noteworthy of which were the regulations concerning National Health Insurance practice which were issued by the Commissioner of Physicians, Dr. Wagner. He declared that:

> "Aryan physicians may be substituted by Aryan physicians only. . . . The same principle applies in the case of employing an assistant.
>
> "Aryan physicians must assign their Aryan patients to Aryan specialists, physicians of hospitals, sanitaria, etc., and *vice versa*. Where local conditions render it absolutely necessary, Aryan physicians, especially those employed in hospitals, may accept assignments from non-Aryan physicians. . . .
>
> "Common practice between Aryan and non-Aryan physicians is prohibited."[24]

Thus collaboration, substitution and consultation between "Aryan" and "non-Aryan" physicians were prohibited. Apparently a specialist's superior knowledge or surgical skill must be dispensed with in order further to segregate the "non-Aryans".

One decree of the Reich Minister of Labour, that of February 3rd, 1934, is especially revealing as to what the moulders of the New Germany consider essential in the training of a Health Insurance officer. After announcing that employment in the National Health Insurance Service and promotion could be secured only on the basis of competitive examinations, the Minister went on to direct that the

> "subject matter of the examination in addition to the general and professional attainments must be civics (National Socialist view of life), as well as racial theory and eugenics.
>
> "The National Health Insurance Service must see to it that all officials, employees and labourers, even if they are not to pass an examination, acquire the necessary knowledge of civics, racial theory and eugenics."[25]

Application to Educational and Cultural Fields

But if National Socialist "civics, racial theory and eugenics" were essential in the Health Insurance Service, how much more so in the educational and cultural institutions! Accordingly, legislation was enacted to clear this field of all elements that might fail to subscribe to the National Socialist view of life. "Non-Aryans" and the politically undesirable were swept from their posts in schools, colleges, universities, even from professional and scientific schools. Instructors, lecturers, professors ordinary and extraordinary, salaried and honorary, were equally displaced. Nor were all young Germans permitted to come indiscriminately and drink freely at this purified fountain of knowledge. Schools in which attendance was not compulsory, colleges and universities were ordered to reduce the number of their "non-Aryan" scholars to a maximum of 5 per cent. of the student body, and new "non-Aryan" pupils

[19] Law Respecting Admission to the Legal Profession, April 7th, 1933, *Reichsgesetzblatt*, 1933, I, p. 188 §§ 1, 2. See also *Gesetzsammlung*, pp. 195, 213.

[20] For exceptions see page 111.

[21] See, for example, *Reichsgesetzblatt*, 1933, I, pp. 188, 277, 522, 217, 528, 669; *Deutsche Justiz*, 1933, p. 729; *Preussische Gesetzsammlung*, 1933, pp. 209, 367; *Justizministerialblatt*, 1933, p. 164.

[22] *Frankfurter Zeitung*, December 20th, 1933.

[23] *Reichsgesetzblatt*, 1933, I, p. 222 § 1, p. 350 § 1. See also *Vossische Zeitung*, July 9th, 1933.

[24] *Deutsches Ärzteblatt*, 1933, p. 131. See also *Völkischer Beobachter*, August 22nd, 1933, November 24, 1933; *Reichsgesetzblatt*, 1933, I, pp. 541, 696, 983, 1118.

[25] *Reichsgesetzblatt*, 1934, p. 84.

were not to be admitted in excess of 1.5 per cent. of the student body. Even the few "non-Aryan" students who were admitted were classed as outcasts and excluded from the Associations of Students that were formed in the universities. National Socialist legislative generosity appears to have been exhausted with the provision that

> "If the number of new pupils admitted into a given school is so small that, according to the fixed percentage, no pupil of non-Aryan descent could be admitted, one pupil of non-Aryan descent may be admitted."[26]

The National Socialists were also greatly concerned about the welfare of the press. "Scandalous" elements were to be eliminated and the "independence of the press" was to be furthered by subordination to the Minister of Propaganda, and by ordering that

> "Only he may be an editor:
> "(3) who is of Aryan descent and not married to a person of non-Aryan descent;
> "(7) who possesses the qualities requisite for a task involving the exercise of a spiritual influence upon public opinion."[27]

Even more rigorous were the requirements for publishers, stockholders of newspaper firms, the members of boards of directors and employees. These must prove "their own Aryan descent and that of their wives . . . up to 1800".[28] Newspaper publishing firms were suppressed if their newspapers reported "on events in a form not commensurate with their importance for the public and which is apt to give offence to, or to prejudice the dignity of the press".

The cinema was regulated by the establishment of a Temporary Film Chamber, membership in which was compulsory for all those who produced, sold or presented films and for "film creators", a comprehensive term which included:

> "Production managers, stage managers, composers, scenario writers, musical managers, musicians, managers of photography, architects, camera men, sound masters, stars and minor artists, supers and the like."

And admission to the Film Chamber might be refused, or a member might be expelled, if the person in question "does not inspire the confidence necessary for carrying on the film profession".[29] Much light was thrown upon this vague standard by Dr. Goebbels, Reich Minister for Enlightenment and Propaganda, when he told the film producers on February 9th, 1934, that one of their chief tasks had been "the exclusion of the Jews"[30]—a task which was performed with despatch and thoroughness.

The most far-reaching measure taken to bend the cultural life of Germany to the purposes of an exclusive racialism was the establishment on September 22nd, 1933, of a Reich Chamber of Culture, with sub-divisions devoted to literature, the press, broadcasting, the theatre, music and the plastic arts. Membership was compulsory, for the Minister of Enlightenment and Propaganda ordered that

> "whoever participates in production, reproduction, spiritual or technical elaboration, dissemination, preservation, sale or commission of sale of a cultural product, must be a member of a branch of the Reich Chamber that appertains to his activity.
> "Dissemination also means the production and sale of technical means for dissemination."

Exclusion from membership in the Chamber of Culture involved a ban on the public pursuit of a person's artistic or cultural activities, and provision was made for the refusal of admission to former political opponents and particularly to "non-Aryans".[31]

As in the regulations respecting the cinema, the familiar "Aryan paragraph" gave way to vaguer formula which read:

> "Admission to a Chamber may be refused, and a member may be excluded, if facts justify the presumption that the person in question does not inspire the confidence or possess the ability necessary for the carrying on of his activity."

But it sufficed, because the Minister for Enlightenment and Propaganda ruled that "non-Aryans" did not possess the necessary reliability and capacity for cultural work.[32]

The "Exceptions" from Discrimination

The campaign of the National Socialists to eliminate all "non-Aryans" from the public life of Germany encountered one obstacle, a self-imposed obstacle. For it was decided to make an exception of certain classes of war veterans and of those who had held office under the Empire. The basic Law for the Restoration of the Professional Civil Service provided that "non-Aryan" officials

> " . . . who were already serving as officials on August 1st, 1914, or who, during the World War, fought at the front for Germany or her allies, or whose fathers or sons[33] were killed in action in the World War "

were not to be removed from office.[34]

Similar provisions are to be found in the laws regulating the liberal professions,[35] but a careful reading of the "Aryan" decrees reveals a decided tendency to whittle down the concessions made. Thus the decree respecting physicians neglected to specify as exempt from discrimination those who had practised their profession since August 1st, 1914; while the law relating to editors does not exempt even those who served at the front during the World War, but merely permits an exception to be made.[36] The failure to disqualify by mention "non-Aryans"

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[26] *Ibid.*, 1933, I, pp. 215, 225, 226. See also pp. 175, 245; *Völkischer Beobachter*, December 24th, 1933, December 22nd, 1934.

[27] *Reichsgesetzblatt*, 1933, I, p. 713 § 5.

[28] Order for the Preservation of the Independence of the Press, April 24th, 1935, in *Frankfurter Zeitung*, April 26th, 1935.

[29] *Reichsgesetzblatt*, 1933, I, p. 483. See also pp. 393, 531; *Reichsministerialblatt*, p. 351.

[30] *Frankfurter Zeitung*, February 11th, 1934.

[31] For an instance of such exclusion see *Manchester Guardian*, April 6th, 1935.

[32] *Reichsgesetzblatt*, 1933, I, pp. 661, 797, 969. See also *Völkischer Beobachter*, March 7th, 1934; *Berliner Tageblatt*, February 8th, 1934.

[33] Or husbands, see *Reichsgesetzblatt*, 1933, I, p. 655.

[34] *Reichsgesetzblatt*, 1933, I, p. 175.

[35] See, for example, *Preussische Gesetzsammlung*, 1933, p. 209; *Reichsgesetzblatt*, 1933, I, pp. 188, 217, 225, 260, 350; *Justizministerialblatt*, p. 164.

[36] See Article 2 of the Ordinance of April 22nd, 1933, *Reichsgesetzblatt*, 1933, I, p. 222, and Article 16 of the Ordinance of December 19th, 1933, *Reichsgesetzblatt*, 1933, I, p. 1085.

from participation in cultural activities (including the film industry) made it impossible for war veterans, even of the preferred variety, to claim exemption. All could be eliminated indiscriminately as lacking the "reliability and capacity necessary" for cultural leadership.

Even more significant were the regulations respecting lawyers and doctors who had been exempted because of their war service. It was not enough that the war registers attested to the fact that a man had been in active service at the front. The administration of justice of a district was "authorised" to request the Minister of Justice of the Reich for a ruling

> ". . . if it hesitates to grant to an advocate the quality of a combatant at the front, despite the fact that it is so certified in the war registers."

And the Ordinance of June 23rd, 1933, regarding exempt doctors and dentists, speaks for itself:

§ 2

> "Even such physicians of non-Aryan descent for whom an exception is provided in . . . the Law for the Restoration of the Civil Service may not be appointed as physicians of trust or of verification of accidents or of similar functions.
> "In so far as non-official non-Aryan physicians have such a position at present, and do not lose it by virtue of the Law for the Restoration of the Professional Civil Service, their service contract must be rescinded. . . . This does not apply to physicians who are severely injured by reason of war wounds.

§ 5

> "In the Social Insurance and Reich Welfare, examination by a non-Aryan physician may be refused by anyone before the beginning of the examination. In this case care must be taken that the examination is made by a capable physician of Aryan descent."[37]

Extension to Industry, Agriculture and Commerce

Save, then, for the rapidly diminishing handful of "non-Aryans" still permitted to maintain a precarious hold upon their former positions, Jews, and Christians of Jewish ancestry, have been driven from the intellectual and cultural life of their country. Government officials, doctors, lawyers, educators, renowned artists and celebrated scientists, even those whose sole interest was the furtherance of human knowledge, have been or are being driven from their posts regardless of years of faithful service, of contributions made to science, to art and letters. The astronomer, the mathematician, the engineer, the chemist, the physicist, the musician, the painter, have not been spared. It matters not that their opinions have been orthodox. If a trace of "non-Aryanism" can be discovered by recourse to long-forgotten and wholly meaningless genealogical tables, the individual can no longer pursue his calling.

Thus far we have examined primarily the discrimination against what might be called the "non-Aryan" intellectuals. If this group alone had been affected, the refugee problem would not have assumed such staggering dimensions. In fact, National Socialist policy of the past three years has manifested a decided tendency to extend the application of the "Aryan" test to other human relations and activities, and the number of potential refugees has thereby been greatly augmented.

The economic opportunities of manufacturers and merchants of "non-Aryan" descent have been progressively curtailed. It was made difficult, if not impossible, for "non-Aryan" firms to secure concessions for public works. A decree of the central government merely ordered that

> "As regards firms, the proprietors or managing officers of which are of non-Aryan descent, the principle obtains that Aryan firms are to be given preference if their offer is equivalent. The officers in charge of the public orders have discretion to decide. . . . "

But, in executing the order, a Prussian official said:

> "I believe that the choice of contractors—as heretofore—must be left to the judgment of the responsible officers placing the orders. In placing the orders—I expect and assume this with certainty—even without special instructions everything possible will be done to have special regard to well-deserving National Socialists."[38]

The legislation respecting the "hereditary" peasantry indicated the desirability of excluding "non-Aryans" from agricultural pursuits. In the law of September 29th, 1933, regulating peasant holdings, it was decreed that

> "(1) Only a person of German or cognate blood may be a peasant.
> "(2) A person is not considered German or as having cognate blood, if his paternal or maternal ancestors have Jewish or coloured blood in their veins.
> "(3) The first of January, 1800, is the day that decides whether the premises of paragraph 1 obtain. . . . "[39]

The Stock and Produce Exchanges were likewise purged of "non-Aryans". The *Völkischer Beobachter,* after declaring that it was not the intention of the Government to decrease the number of brokers, went on to say:

> "The paramount consideration was the purging of the German Stock Exchange of all foreign and non-Aryan intruders, and making the vocation of brokers into a class of honest merchants who are suitable for their calling because of their national sentiments."[40]

Finally, the intention of the Government with regard to "non-Aryan" business establishments was revealed in the regulations respecting the expenditure of the sums received by loyal "Aryans" as "marriage loans". The Reich Minister of Finance ordered that

> ". . . As sales agencies are admitted . . . only those whose

[37] *Reichsgesetzblatt,* 1933, I, pp. 397, 528. Many exempted "non-Aryans" were eliminated through the application of Article 6 of the Law for the Restoration of the Professional Civil Service which authorized the retirement of officials for the purpose of "simplifying the administration." See *ibid.,* p. 175. Paragraph 4(2) of the "Law on Citizenship and on the Protection of the Purity of German Blood," issued on November 15th, 1935, prescribes that *all* remaining Jewish officials be retired by December 31st, 1935. So far as Jews are concerned, the exception has been completely withdrawn. See *Völkischer Beobachter,* November 16th, 1935.

[38] *Reichsanzeiger,* No. 180; MBLiV. I, p. 1277 § 2.

[39] *Reichsgesetzblatt,* 1933, I, p. 685 §§ 11-13. See also pp. 118, 1096, and *Gesetzsammlung,* p. 165.

[40] See *Völkischer Beobachter,* October 6th, 1933, November 4th, 1933.

owners warrant that they will always unswervingly support the National Socialist Government,"[41]

a condition which could, of course, not be met by "non-Aryans".

It must not be assumed that these selected regulations exhaust the National Socialist discriminatory legislation with regard to the economic activities of "non-Aryans". They have been selected with the sole purpose of indicating that not only will the men and women who have been driven from the civil service and the professions find it impossible to employ their talents and earn a livelihood in commerce and industry, but also that the opportunities of "non-Aryan" business men and manufacturers are being progressively circumscribed. Is it then the intention of the National Socialist Government to reduce all "non-Aryans" to the status of manual labourers? For light on this question one must turn again to the basic law of April 7th, 1933, to which reference has repeatedly been made, and to subsequent legislation respecting employees and workers.

The Law for the Restoration of the Professional Civil Service specifically mentions "clerks and workers" of "non-Aryan" descent as subject to dismissal, a provision which must have cut deeply into the economic opportunities of "non-Aryans", since it has been applied not only in the agencies of the central government but also in those of the " . . . states, communes, unions of communes and of *other associations, institutions and foundations of public law.*" [Italic ours.][42] The Reichsbank, the State Railway Company, and "religious associations of public law and their federations" are specifically "authorized to issue similar provisions"—an authorization which is, of course, to be regarded as a mandate for immediate action.[43] Moreover, the term "institutions, associations and foundations of public law" includes also all

> "unions of corporations, associations and institutions more than half of whose income comes from public bodies, . . . enterprises more than half of whose corporate capital is owned by public bodies, . . . and all subsidiaries and intermediaries more than half of whose capital belongs to public bodies."

The service contracts of "non-Aryan" employees and workmen of these establishments, as well as of the central and local governments are to be annulled "within one month, to be effective at the end of the following month".[44]

Employment, then, even as clerks and manual labourers, is denied to "non-Aryans" in all establishments directly or indirectly endowed with a public character. One recourse would remain, namely, to work as artisans in private industry. But that avenue of escape has not been allowed to remain unencumbered with obstacles. Membership of Jewish artisans in guilds or trade unions has been discouraged by the Federation of German Handicraftsmen in the following instruction:

> "Membership of Jewish artisans in trade unions is admissible as far as binding legal provisions exist in regard to membership in the chamber of artisans and the compulsory guild. But it must be avoided at all events that the Jewish members of the trade unions hold offices or seats on the board. As far as membership in the trade unions is not legally required, the individual trade unions may decide at their own discretion whether they wish to admit Jewish members. But it goes without saying that on principle, Jewish members should not hold offices or seats on the board."[45]

"Non-Aryan" Christians, as well as Jews, are excluded from the Labour Front, the only authorized labour organization, which embraces in its membership employers, employees and manual labourers. Technically, employment is not conditional upon membership of the Labour Front, but in practice "non-Aryans" are in constant danger of losing their jobs and, once out of work, a "non-Aryan" can entertain little hope of finding further employment.

. . .

The legislative disabilities of "non-Aryans" which have just been analysed prove that it is the intention of the National Socialist rulers of Germany to eliminate Jews and Christians of Jewish ancestry from all public and semi-public institutions, from the liberal professions and from intellectual and cultural life; to restrict their opportunities as business men, employees or labourers; and to segregate them as a group of outcasts. However, the full force of these laws and decrees, many of them quite loosely drawn and obscure, can be felt only when one examines the manner in which they have been interpreted by the courts and applied by local authorities. Nor must we fail to take into consideration the extra-legal measures employed both to remove "non-Aryans" from fields of endeavour not yet closed by legislation and to make the practice of their calling impossible for those who were expressly exempted from the disabilities because of war service or other reasons. We must remember that "Aryan" legislation has set a standard for National Socialist Germany, and those who feel strongly on the question of "Aryanism" and "non-Aryanism" cannot fail to draw their own conclusions and act accordingly. For example, if "non-Aryan" medical men are prohibited by law from practising as panel doctors and dentists, if even the few favoured and exempted persons must not be retained in "positions of trust", how can an "Aryan" come to such a person for private consultation? When "non-Aryan" lawyers and educators are ostracized, a war veteran cannot flaunt his war record before every client or pupil. If "non-Aryan" business men and labourers are denied all contact with public institutions, pure "Aryans" cannot fail to boycott their shops and avoid all intercourse with them. In short, we must examine the court decisions, the application of the laws by local officials and the activities of the National Socialist Party and its affiliates to obtain a true picture of the present status of "non-Aryans" in Germany.

Chapter II

ADMINISTRATIVE MEASURES AND PARTY ACTIVITY

The full picture of the straits to which the "non-Aryan" population of Germany has been reduced by legislative discrimination is not adequately portrayed merely by an analysis of the formal statutes enacted. The very organization of the Reich encourages legislation in the wider sense by administrative officials, both national and local, Party leaders, corporate Chambers and quasi-public bodies. As a result, it has been possible to apply the racial principle to the remotest nooks and crannies of German life.

Lacunae left in the laws, as well as daily applications of the statutes to specific instances not regulated thereby, are dealt with

[41] See *Reichsanzeiger*, No. 199 § II; *Reichsgesetzblatt*, 1933, I, p. 377 § 1.

[42] *Reichsgesetzblatt*, 1933, I, p. 175 § 15; p. 433 § 6 (1).

[43] *Ibid.*, 1933, I, p. 175 § 1 (4); p. 433 § 6 (2). See also p. 622.

[44] See Ordinance of May 4th, 1933. *Reichsgesetzblatt*, 1933, I, p. 233 §§ 1, 3; Ordinance of September 28th, 1933, *ibid.*, 1933, I, p. 678 § IX; Decree of August 7th, 1933, *Reichsbesoldungsblatt*, p. 113 §§ 1, 2, 9.

[45] *Völkischer Beobachter*, October 18th, 1933.

according to the discretion of administrative officials. The identification of Party with State, as well as the assumption of the functions of government by Party members rather than elected officers, gives to the orders and actions of National Socialist leaders a public legal character.[1] The organization of each branch of economic and cultural activity into a corporate Chamber upon the fascist model makes it possible for these quasi-autonomous bodies to legislate within the sphere of jurisdiction left to them. In addition, every local society, business, or private organization is encouraged to carry on the process of *Gleichschaltung* (i.e. "co-ordination" and the removal of "non-Aryans") of its own accord, assured as it is of the wholehearted support of the Government in such a programme.

Furthermore, even many "non-Aryans" who, because they come within certain exceptions, are still in theory allowed to practise their occupations,[2] are in actual fact forced from their positions, and ruined in their professions and businesses by the governmentally encouraged boycott. This further and final handicap has penetrated all fields of endeavour, but has been particularly noticeable in business life where the racial principle has not yet been completely applied by statute.

The manner in which the Government's programme of discrimination against "non-Aryans" has been extended and enforced in all branches of activity may be seen from the following typical instances relating to the professions, education, culture, commerce, artisanship and business.

Law and the Judiciary

As a result of the National Socialist revolution, the German Bar Association was dissolved and a National Socialist Lawyers' Society was set up to replace it. Even those "non-Aryan" lawyers who came within the exceptions of the law of April 7th, were refused membership in this "co-ordinated" association.[3]

Dr. Freisler, leader of the National Socialist League of German Jurists, protested as early as August 9th, 1933, against the use by "Aryans" of Jewish lawyers. "This conduct," he said, "is incompatible with the guiding principles of the national reconstruction." He gave warning that the National Socialist League would thereafter publish the names of all "Aryans" who employed Jewish lawyers to defend them.[4] Nor is the "non-Aryan" lawyer given an equal status before the Courts. The *Frankfurter Zeitung* of February 5th, 1935, reported a case before a Labour Court in which the Magistrate declared, following upon the speech of a Jewish lawyer, that "racial considerations" prohibited the Court from considering the case of the client of the Jewish lawyer on its merits. The Magistrate admitted that the fact that "the defendant had chosen this counsel proved his lack of instinct and was significant of his lack of racial and National Socialist sentiments."

The difficulties which Judges of "non-Aryan" descent who are allowed to retain their positions nevertheless face have been illustrated in numerous court decisions upholding their removal as being "prejudiced" and unfamiliar with the "National Socialist view of life".[5] In addition, an order enacted by the Minister of Justice as early as April of 1933 is still in force and prohibits even those "non-Aryan" Judges still allowed to sit from adjudicating upon cases of criminal law. This same prohibition still stands, without exception, for state's attorneys and public prosecutors of "non-Aryan" descent.[6]

An example of the thoroughness with which this "co-ordination" or removal of "non-Aryans" has taken place was given by an announcement in the *Juristische Wochenschrift* of August 5th, 1933, the organ of the new German bar association and formerly edited by Justizrat Magnus, one of the leading jurists of Germany, a "non-Aryan". The announcement read in part:

> "The *Juristische Wochenschrift* . . . can publish contributions only from persons who are 'Aryans'. Books written by 'non-Aryans' or published by 'non-Aryan' publishing houses will not be reviewed; advertisements regarding such books will not be accepted for the advertisement section."

Furthermore, the new editors announced that only such articles would be published as "unconditionally adhere to the platform and viewpoint of National Socialism".[7]

Nor has the Government reached the end of its programme for the dismissal of "non-Aryan" lawyers and judges. The Minister of Justice for the Reich and the Leader of the National Socialist Bar Association declared in May, 1935, that "it is our great task to take the necessary steps to remove these parasites and create a true German law".[8] This end is being attained through the boycott of "non-Aryan" lawyers which is carried out by the National Socialist Bar Association. Those who attempt to earn a pittance by assisting "Aryan" lawyers are faced with regulations laid down by the Bar Associations, both national and local, forbidding such relations.

Medicine

As in the case of lawyers and judges, "non-Aryan" physicians and dentists have been subjected to further discrimination even though they come within the exemptions laid down by law.[9] Nominally, "non-Aryan" physicians or dentists who were admitted to practice before 1914, who fought at the front, who served in a military hospital during the war, or who lost a father or husband in the war, may continue to serve as Panel physicians under the Health Insurance Service. In March 1934, however, the Nationalist Club for Legal Information of Greater Berlin made public the fact that, since "non-Aryan" physicians may not be appointed experts in legal proceedings to obtain compensation and pensions under the Social Insurance regulations, claims certified by such physicians would not be honoured. "All patients, therefore," the announcement ran, "who owing to an illness, have a claim for a pension are cautioned that they must be treated from the very beginning by German Christian (Aryan) physicians only, because, as mentioned above, they alone are considered eligible as experts in court procedure".[10] Since many illnesses or injuries may eventually result in a claim for a pension or compensation, there is little likelihood that even "non-Aryan" physicians still allowed to retain their Health Panel or their Social Insurance practice, have greatly benefited from their right.

Furthermore, no "non-Aryan" medical student, even if he completed his studies before 1933 and passed his examination, may be licensed to practice.[11] In certain exceptional instances, and under the following conditions, a "non-Aryan" may be licensed to practice after completing the examination; if he is

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[1] They have at their disposal, in fact, a police force of their own, composed of the *Gestapo*, or Secret State Police, and the S.S. formations.

[2] See pp. 110, 111.

[3] Chapter 2, clause 4 of the Statutes of this organization specifies that all members must be of "German blood." *Frankfurter Zeitung*, November 21st, 1933.

[4] Reported in the *Hessische Volkswirt*, August 10th, 1933.

[5] See p. 122.

[6] Decree of the Minister of Justice, reported in the *Völkischer Beobachter* of April 12th, 1933.

[7] *Juristische Wochenschrift*, August 5th, 1933.

[8] *Völkischer Beobachter*, May 6th, 1935.

[9] See p. 110.

[10] *Völkischer Beobachter*, March 14th, 1934.

[11] See p. 108.

only a "quarter Jew", that is, has only one grandfather or grandmother of Jewish blood; or if he fought in the war (most unlikely, of course, in the case of candidates for license at this date); and if his mental attitude and physical appearance are unobjectionable. Likewise, "non-Aryan" dentists and dental mechanics may not be admitted to the necessary examinations for the exercise of their profession.

Furthermore, according to rules set forth by the National Socialist Medical Association, "Aryan" physicians or dentists are forbidden to engage "non-Aryan" physicians or dentists as assistants, or substitutes, to have a joint consultation office, or to refer cases regarding expert treatment to specialists of "non-Aryan" descent. "Non-Aryan" physicians who come within the exceptions are also forbidden to employ "non-Aryans" who have been excluded.[12]

Education

According to a decree of Reich Minister Rust, no "non-Aryan" pupils may be admitted to German elementary public schools.[13] "Racial science," teaching that the "non-Aryan" is a perverse and traitorous creature has been made a fundamental part of the school curricula by order of the Prussian Minister of Education.[14] The Instructions issued by the Prussian Minister for Economy and Labour, for example, in March 1934, setting forth the subjects recommended for "civic education" in professional and technical schools, contained suggestions for the study of "the new structure of the family and nation on a racial basis, and in this regard the Jewish question".[15]

Among the official school texts chosen by Reich Minister Rust for this racial study are the following: Adolf Hitler's *Mein Kampf;* Theodore Fritsch's *Handbook of the Jewish Question;* H. F. R. Gunther's *Racial Science of the Jewish People;* and A. Rosenberg's *Protocols of the Elders of Zion and Jewish World Politics.* The instuctions given to German school teachers on methods of lecturing schoolgirls on the Jewish question advise that "when raising the Jewish question with the girls, steps should be taken by the teachers to bring out the fact that Jews are of Asiatic descent and cannot mix with 'Aryans', and that intermarriage with Jews is out of the question".[17] In the schools of Bavaria a text-book by von Fikenscher, *Aufbruch der Nation,* is used with the approval of the Minister of Education and is particularly devoted to reconstructing German history so as to portray the Jew as a villain.[18] The Handbook of the Hitler Jugend teaches the same doctrine.[19]

The central organization of the German students *(Deutsche Studentenschaft)* has taken a leading rôle in preventing even those "non-Aryan" professors exempt from dismissal from carrying on their teaching. Its proclamation of April 21st, 193 called for the elimination of all Jews from Germany as "alie antagonists," and suggested the public burning of "un-Germa books". The student body of the University of Berlin ordere students not to enroll for or attend lectures delivered by "Jewi instructors".[20]

Further, Minister of Education Rust on March 23rd, 193 issued decrees which render it improbable, if not impossible, tha "non-Aryan" children or those who refuse to accept National Socialist principles will be educated beyond the elementary school stage. Pupils of "Aryan" descent, even if intellectually inferior, are to be allowed to make up for this deficiency by their "bodily capacity," "ability to lead," and "personal character". In no case, the decree runs, may "Aryan" pupils be placed at a disadvantage in relation to "non-Aryan" pupils. In addition, children, who "through their attitude within or without the school sabotage the unity of People or State must be expelled". [21]

Artisanship

In the field of manual labour, also, the lack of specific legislation preventing "non-Aryans" from continuing their activity has been no obstacle to their exclusion in practice. Artisanship, like the cultural activities, the professions, and commerce, has been organized in the form of state associations, corporate groups which apply the racial principle to their jurisdictions.

This was clearly shown by the order of Dr. Hjalmar Schacht, Reich Minister of Economics, on March 12th, 1935, when he pointed out that for "non-Aryans" the "independent pursuit of a manual craft as a standing trade is contrary to the provisions of the Third Ordinance regarding the Preliminary Reconstruction of German manual trades, dated January 18th, 1935".[22] In actual fact, the Ordinance mentioned by the Minister of Economics contains no "Aryan paragraph". Nevertheless, his statement was a confession of a common state of affairs and accurately portrayed the reality that, without such a clause, and on grounds of "unreliability", "non-Aryans" have been excluded from artisanship. In this field of activity, it has been decided that graduates of a Jewish manual training school course cannot, whatever their ability, become qualified for membership in the Manual Trades Guild, which is compulsory for all artisans. Furthermore, "non-Aryans" who have taken the regular manual craft training either find it impossible to obtain masters to whom they may be apprenticed, or, after their apprenticeship, may still be excluded from the Guild upon the protest of a single member. Furthermore, Jewish youth in Upper Bavaria, according to a decision of the Chamber of Commerce, may not be apprentices; for membership in the Hitler Jugend is required, an organization to which "non-Aryans" cannot belong.[23] Thus, for all practical purposes, in artisanship and the handicrafts there is an unwritten "Aryan paragraph" which is effectively applied.

Commerce and Industry

The re-organization of commerce and industry along corporate lines has been directed towards the elimination of "non-Aryans" through the process of "co-ordination," and has been

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[12] See p. 108. Decree of the Commissioner of Medicine, Dr. Wagner, August 22nd, 1933, *Völkischer Beobachter,* August 22nd, 1933.

[13] *Völkischer Beobachter,* September 11th, 1935.

[14] *Frankfurter Zeitung,* January 28th, 1935. Jewish pupils also must take the course in Raceology, for it is made a compulsory requirement in the final examinations. *Deutsche Allgemeine Zeitung,* September 20th, 1933.

[15] *Völkischer Beobachter,* March 6th, 1934.

[16] *Frankfurter Zeitung,* November 9th, 1934.

[17] *Neue Deutsche Schule,* January 23rd, 1934.

[18] It speaks of "inflation swindlers and Jewish profiteers" (p. 14) and urges "away with the Jews and the traitors" (p. 24). The Schools of Saxony, also, have been specially directed to emphasize the racial issue. *Völkischer Beobachter,* October 18th, 1935.

[19] In a catechism, the following colloquy among others takes place and must be memorized:
12. *Q.* Why are we Jew-Haters?
A. The Jew is the scourge of humanity, the worm which eats up the nation and brings about its collapse.

[20] *Völkischer Beobachter,* May 14th, 1933, where this announcement was made under the caption, "German instructors for German Universities."

[21] *Frankfurter Zeitung,* March 24th, 1935.

[22] *New York Times,* March 13th, 1935, p. 13.

[23] *Frankfurter Zeitung,* October 6th, 1935.

accomplished through the efforts of the Government as well as its instrument, the Party. The larger industrial associations and commercial unions have introduced "Aryan" clauses into their constitutions as requirements for membership.[24] The control exercised by the State over Chambers of Commerce and cartels has been used to this same purpose.[25]

In most large stores and factories, the Party has formed cells which through sabotage, intimidation, and official pressure agitate for the dismissal of all "non-Aryans", even though they be the proprietors.[26]

Among the state-controlled economic bodies which have been "co-ordinated" and from which "non-Aryans" have been dismissed are the following:

The Provisional Reich Economic Council *(Reichsgesetzblatt,* 1933, II, p. 165).
The Reich Coal Council *(R. G.,* 1933, p. 203).
The Reich Potash Council *(Ibid.,* p. 205).
Executive Committee of Central Co-operative Societies Bank *(Ibid.,* p. 227).
Board of Directors of Bank of German Industrial Bonds *(R. G.,* 1933, I, p. 483).

Although in some instances the Reich Minister of Economics, sensitive to the economic dislocations which might result from too immediate an elimination of "non-Aryans" from business, has protested against the use of the racial principle,[27] the official campaign to eliminate "non-Aryans" has been no less effective though its tempo be somewhat slower than the more wholesale methods employed in other spheres.

The *Frankfurter Zeitung* of October 18th, 1935, reported just such an instance of the official governmental attempt to have Jews dismissed from business. A merchant complained that the dismissal of his "non-Aryan" employees had been demanded of him by the "official authorities".

It has already been pointed out that the Government, in certain laws and decrees, has given the signal for the elimination of "non-Aryans" from business and commerce.[28] Thus, "non-Aryan" firms receive no public contracts, and are excluded from accepting in payment the vouchers *(Bedarfsdeckungsschein)* of the unemployed for their purchases. Because of the magnitude of business affected by these prescriptions, this has been the first step in the programme to banish "non-Aryans" from commerce and industry. In order to save his firm from complete collapse, "the non-Aryan" is forced to take in "Aryan" partners, give them a majority share in the company, and to dismiss all "non-Aryan" employees. An example of this procedure was given early in 1934, when the Salamandar Shoe Company, a "non-Aryan" undertaking, was "co-ordinated", the shares passing into "perfectly Aryan hands".[29] Likewise, the Fuld Telephone Company was taken over by the Government in June, 1934, and "co-ordinated", the "non-Aryan" founders being retired from the board.[30]

Furthermore, industrial and commercial associations have been formed by "purging" existent bodies and excluding "non-Aryans". A German "Aryan" Clothing Manufacturers Society has replaced the former Association, and is dedicated to the elimination of "non-Aryans" by proving that "even in the clothing industry the monopoly of 'non-Aryans' has been abolished." All selling agents, brokers, and commercial representatives of "non-Aryan" origin have been excluded from the new Union of Commercial Representatives and Travelling Salesmen which has replaced the Central Union of German Commercial Representatives.[31] The same result has been obtained by the German Union of Exchange Bankers.[32]

The Government itself has sought, by further administrative orders, to restrict the economic opportunities open to "non-Aryans". On April 17th the Minister of Interior decided that no Apothecary's license is to be granted to any person of "non-Aryan" descent or to one who is married to a "non-Aryan". No exception is made for those who fought in the war.[33] The trade in antiques, which has among its leading merchants a great number of persons of "non-Aryan" descent, has also been made a closed field for them.[34] The German Railway, a semi-governmental corporation, published an order in May, 1935, confirming the fact that "advertisements of Jewish firms are no longer admissible within the precincts of the German Railway," and adding that proof of "Aryan" descent would no longer be required where from the name of the enterprise its "non-Aryan" origin was clear.[35]

Here, we find the most effective and ingenious method of co-ordination: the elimination of "non-Aryans" from commerce and business through boycott. For, even those "non-Aryan" firms which are able to resist "co-ordination" are forced to renounce the name "German business", to emphasize their "non-Aryan" nature, and thereby render themselves easy targets for the systematic and governmentally encouraged boycott. Since businesses employing Jews are considered to be "non-German", the boycott of such concerns invariably leads to the dismissal of all Jewish employees.[36] Thus, business, like the professions and other fields of activity, is made impossible for those of "non-Aryan" descent.

But, more than the mere hindrance of the business activity of "non-Aryans" is taking place, more than a curtailment of

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[24] "As the industrial life of the nation is organized by the Nazis, it is virtually impossible to engage in business unless one is a member of an appropriate association or union. But many of these organizations, such as the Association of German Brokers, have introduced an 'Aryan' clause into their constitutions." Mr. John Elliott, Berlin Correspondent of the *New York Herald Tribune,* April 15th, 1934.

[25] As reported in the London *Economist* of April 22nd, 1933: "Private organizations have also found it advisable to eliminate from leading positions in their offices those persons—Jews and members of the Parties of the Left—who are regarded by the Government as undesirable. The *Gleichschaltung* usually consists in the appointment of one or more Nazi Commissioners as members of the organization."

[26] A case was reported on March 12th, 1935, in the *Frankfurter Zeitung,* of an action brought by a Jewess who was dismissed from a firm in Wiesbaden as a result of a letter received by her employer from the District Leader of the National Socialist Party. This communication threatened boycott if the employee remained.

[27] These protests themselves have been official corroborations of the intense pressure which is being placed upon "non-Aryan" business men, and are motivated rather by a fear of the dangerous consequences which may follow for the German economy than by a concern for the suffering of the Jewish merchant. See the statement of Dr. Schacht reported in the *New York Times* on August 20th, 1935; and on November 17th, 1934, in the *Frankfurter Zeitung.* These suggestions have fallen on deaf ears.

[28] See p. 111.

[29] Reported in *Der Stürmer,* January, 1934.

[30] *Frankfurter Zeitung,* June 3rd, 1934. Other "non-Aryan" firms are daily being forced to pass into "Aryan" hands; for example the firm of Dr. Paul Meyer, A.G. (reported in the *Frankfurter Zeitung* of August 26th, 1934); and the Tietz Chain Stores (reported in the *Manchester Guardian* of April 7th, 1933.)

[31] *Deutscher Handelsvertreter Zeitung,* March, 1934.

[32] *Frankfurter Zeitung,* March 20th, 1934.

[33] *Ibid,* May 10th, 1935.

[34] Jewish art dealers in Munich were ordered by the local police to close their stores; *New York Times,* September 12th, 1935.

[35] *Westfaelische Landeszeitung;* quoted in *Jüdische Rundschau,* No. 44, May 31st, 1935.

[36] See *Frankfurter Zeitung* of May 8th, 1935, for a typical example of this result.

the means of livelihood for the more than 60 per cent. of the Jews of Germany engaged therein. The latest reports indicate that nothing less than the complete liquidation of all economic enterprises owned by Jews is the objective of National Socialist policy. The only sphere of economic activity left to Jews is to buy and sell among themselves in a veritable Ghetto. Pressure is being placed upon Jewish owners of corporation stocks to sell them at greatly reduced figures, in order that a concern may be known as thoroughly German. A plan has been advanced by the Party's Economic Information Agency for the liquidation of Jewish holdings through the creation of a central corporation which, backed by the power and the authority of the State, will compel Jews to sell their property at the lowest possible figure.[37] The achievement of this final expropriation of the property of Jews would seem to be only a matter of time; it has hitherto been slackened somewhat by the desire to avoid serious repercussions upon German economic life. But the aim of the Government has not been left obscure, and is rapidly being attained.

The Boycott of "Non-Aryans"

The deliberate and nation-wide boycott of Jewish business firms was first announced by the Government to begin on April 1st, 1933, and still continues with the greatest intensity. Previous to that date, the Party had prepared the groundwork by boycott propaganda and by demonstrations in which the members of the S.A. *(Sturm Abteilung)* took the leading part. General Goering, himself, then Prussian Minister of the Interior, as early as March 10th, 1933, confirmed the fact that the Government was encouraging Germans not to buy from Jews.[38] On March 27th, the National Socialist Party headquarters decided to transform these isolated boycott activities into a huge nation-wide demonstration.[39] The manifesto of the Party, proclaiming the country wide boycott of business conducted by Jews, as well as of Jewish professional men, appeared on March 29th, 1933.[40] Every local branch and unit of the Party was to appoint a Committee of Action to "popularize the boycott by propaganda and enlightenment". Herr Julius Streicher was appointed chairman and director. The Committees were urged to "penetrate into the smallest villages in order particularly to strike at Jewish rural traders", to organize "tens of thousands of mass meetings which shall reach into the tiniest hamlets". The Jewish origin of the victims was to be judged on the basis of race rather than religion[41] and picketing was to be coupled with the posting of placards announcing the race of the victim. In order to finance the campaign, contributions were to be solicited from "German business men".[42]

The suspension of the boycott was announced by a representative of the Government, Minister of Propaganda Goebbels, on March 31st, to commence on April 2nd.[43] Despite this official suspension, however, it is clear that the intent of the Government is to use the Party organization (they are, in fact, identical) to make the boycott of "non-Aryans" in Germa a permanent and systematic "humiliation of the Jews of Ge many".[44] The original Party instructions called for a movem of long duration, and the current of events since April 1st, 193 shows clearly how thoroughly successful this measure has be in removing and humiliating "non-Aryans" whose existenc was not already wiped out by statute.

The Committees of Action have drawn up directories o "non-Aryan" merchants which are distributed to the consumi public. "Aryan" stores are forced to place in their windo signs indicating their German origin; and no "non-Aryan enterprise may do so without being called into court for unfa trade practice.[45] Hotels, restaurants, cafés, and even food stor and apothecaries' shops, are in various localities made to be signs announcing that Jews may not even buy from them. Tho who buy from "non-Aryans" are warned by the Party that the will be considered traitors to the people.[46] That these conditio are not accidental, but that they are on the contrary the ver substance of the Government's programme, is shown by th express declarations of Party officials and Government leade

The Party has issued instructions to its members forbiddi any contact between them and Jews, and providing for punis ment of those who fail to "maintain an attitude of reser towards Jews".[47] District Leader Grohe, speaking before th Hitler Youth at Aachen on July 22nd, 1934, declared tha "anyone who buys of a Jew, or consults a Jewish physician, o a Jewish lawyer, besmirches German honour".[48] Gustav Gr secke, Peasant Leader for Brunswick, decreed on August 9t 1935, that "any German peasant engaging in trade with a Je or otherwise maintaining contact with him, commits treason t the blood and gives comfort to the deadly enemy of the Germa people, the Jew".[49] A similar warning was given by the Par Leader of Bretzenheim, Herr Lotz, on August 31st, 193 pointing out the falsity of the "rumour" spread by "selfi persons", that "trade with Jews is now permitted". On th contrary, he declared, it is the duty of every German to de with his folk-comrades and not with Jews.[50] Sprenger, th National Socialist District Leader for Hessen (which includ the city of Frankfurt) and at the same time the Governor of th State and Province of Hessen, was reported by the *Frankfurt Zeitung* on March 19th, 1935, to have declared in a spee before a gathering of peasants:

> "The peril is still among us, for there are still Jews Germany. . . . the way from the peasant to the townsma must be through the German and not through the Jew."[51]

[37] *New York Times,* September 24th, 1935.

[38] "What more had happened than that we Germans said, 'Germans, don't buy from the Jews; buy from the Germans'?" General Goering's speech at Essen, reported in the *London Times* of March 11th, 1933.

[39] *Völkischer Beobachter,* March 28th, 1933.

[40] *Ibid.,* March 29th, 1933, Articles 3, 4, 7 and 9 of the Manifesto.

[41] "Religion," ran the proclamation of the National Socialist Boycott Committee, "is immaterial"; business men of Jewish race who were converted to Catholicism or Protestantism "are also Jews in the sense of this Decree" (Article 11); quoted in the *Völkischer Beobachter,* March 30th, 1933.

[42] Articles 7 and 13 of the Party Proclamation.

[43] *Völkischer Beobachter,* April 1st, 1933.

[44] As the official *Völkischer Beobachter* wrote on April 3r 1933.

[45] See court decisions cited, pp. 122, 123.

[46] See pp. 123, 124.

[47] Ordinance of Rudolf Hess, Deputy of Chancellor Hitler, August 16th, 1934, published in the *Völkischer Beobachter,* Augu 17, 1934.

[48] *Westdeutscher Beobachter,* July 24th, 1934.

[49] Quoted in the *New York Times,* August 10th, 1935, p. 6.

[50] *Bretzenheimer Nachrichten* of August 31st, 1934.

[51] Countless other similar declarations have been made. T District Leader for the Saar Territory, Buerckel, has publish a proclamation declaring: "National Socialists, it is necessary remind you that we have lost nothing in the rag-shop of the Jew . . . and if you tell me that your wife does the shopping, it follo that in your house no National-Socialist spirit prevails, and th you yourself are no real man, but a buffoon." (Quoted in *Rhi NSZ Front, a.d. H.,* December 18th, 1934.) The State Council of Hamburg was reported by the *Hamburger Tageblatt* on D cember 12th, 1934, to have declared that: "Just as you wish t German people to buy in German shops, even so do we dem that the German tradesmen buy only from the German ma facturers."

The Mayor of Nuremberg, who in an order of May 19th, 1934, set forth rules for the purity of the German language, took the opportunity to point out that, as a matter of practical as well as of grammatical accuracy, "when discriminating between German and non-German businesses, the designation 'Christian' is totally unsuitable and should be avoided in principle". For, he declared,

"There are no 'Christian' shops, physicians, cattle dealers, lawyers, etc. In contradistinction to the Jewish, there are only German physicians, German cattle dealers, German lawyers. . . . It is absolutely immaterial whether one or the other of the Jews in question is Catholic, Protestant, or otherwise baptized, he is and remains a Jew."[52]

It is this constant distinction between "German" and "Jewish" business which has been made the rallying cry for the boycott. The most active propagandist force, beside the National Socialist Party proper, has been the HAGO (*Handwerker und Gewerber-Organisation*), the official National Socialist Syndicate of Artisans and Merchants. It has been particularly successful in preventing retailers from continuing to purchase from Jewish wholesalers.[53] This end is being accomplished both by the compilation of lists of "non-Aryan" firms and by threats of official punishment. The National Socialist Party district offices have also reached consumers by requesting signatures to the following "Solemn Declaration of Honour":

"I hereby declare on my word of honour that from now on and in the future I shall never do business of any kind with Jews, or with anyone connected directly or indirectly with Jews. I shall never enter a Jewish shop, and will turn away any Jews who enter my place of residence or estate.

"I shall not consult a Jewish physician or a Jewish lawyer. I shall also take care that nobody in my family, or my relatives or acquaintances, visits Jews.

"I am aware that I have the opportunity to consult the list containing the names of Jewish businesses in my residential district. I am also aware that if I fail to keep this promise, or if I try to evade it, I shall be expelled immediately from the Party, the S.A., the local Council, the National Socialist organizations (cross out those of which you are not a member), and that I may be branded, both orally and by writing, a man who has broken his word of honour and as a scoundrel."

To this relentless campaign, the Courts of Germany have given full sanction and support.[54] They have judicially declared boycott lists to be legitimate means of furthering the national interest; they have accepted the definition that a "Jewish business" can never be a "German business", and they have penalized and punished, as employing methods of unfair competition, "non-Aryan" merchants who have dared to lay claim to the title of "German".

In addition to the boycott adopted in the economic sphere, "non-Aryans" in Germany are subjected to a social boycott which is designed to ostracize them and confine them to a Ghetto. Over fifty-six German towns have either posted signs on their outskirts announcing that they exclude Jews from their territory, have forbidden them to buy real estate, or have threatened to discontinue public relief to any unemployed person associating with or buying from Jews.[55] Most of the German seaside and other holiday resorts and spas, such as Bad Duerkheim, Misdroy, Arendsee, Swinemuende, Neustrelitz, Lychen, Heringsdorf, Norderney, Borkum, Sylt, Garmisch-Partenkirchen (*the proposed site of the Olympic winter sports contest*) to mention only the best known, exclude Jews. Recently, also, the boycott has been extended in the smaller towns particularly to prevent Jews from making purchases of food and medical supplies, as well as of other necessary products, in "Aryan" shops.

The social isolation and humiliation of "non-Aryans" is further stimulated by the persistent and relentless campaign of propaganda which is one of the principal activities of the Party and one of the foremost preoccupations of the Government. The Government itself has undertaken on the widest scale the encouragement and propagation of the beliefs that "non-Aryans" are sexual degenerates,[56] murderers of "Aryan" children,[57] and traitors to Germany.[58] This propaganda is consistently stressed in the public pronouncements of government officials, is hammered daily into the minds of all readers of the co-ordinated press, and is made a part of the daily instruction in the schools.[59]

It has been widely disseminated throughout Germany by means of *Der Stürmer* and the efforts of Herr Streicher, Member of the Bavarian Government and District Leader of Franconia. This paper has a weekly circulation of 480,000 and is distributed with the aid of the National Socialist Party. Its ritual murder number of May 1st, 1934, in which fourteen pages were devoted to details of an alleged "Jewish plot to murder Herr Hitler", was typical of the inflammatory nature of the propaganda which it broadcasts throughout Germany, and even into the elementary schools. Its pages are filled each week with stories designed to portray the Jew as a sexual degenerate and fiendish villain; and suggesting the most violent

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[52] Quoted in full in *Der Stürmer*, May, 1934.

[53] A typical boycott appeal by the HAGO Leader of Hanover is printed in the *Frankfurter Zeitung of* July 27th, 1933.

[54] See pp. 122, 123.

[55] Those announcements have, thus far, come from the following towns, among others: Ockenheim, Rommersheim, Udenheim, Schweisweiler, Koenigstatten, Dieburgstatten, Niederstein, Wuerzburg, Rotenburg (Hessen-Nassau), Hassfurt, Schotten, Frohnhofen, Adelshofen, Schriesheim, Asemissen, Greste, Bechterdissen, Bacharach, Bechtheim, Doddenheim, Bunzlau, Brilon, Delbrueck, Kreis, Detmold, Frankenberg, Frankfurt-on-the-Oder, Fraustadt, St. Goarshausen, Hangen-Weissheim, Neuss, Waldshut, Wallerstaedten, Westhofen, Arnsheim, Schoenebeck, Oppenheim, Teterow, Edenkoben, Coburg, Herborn, Freystadt, Osann, Hundsaugen, Pleutschbach, Weroth, Oberhausen, Wittlich, Bergzabern, Rosslau, Wimpffen, Breunigweiler.

[56] The Law of September 15th, 1935 (see p. 105) prohibiting "Aryan" female servants under the age of forty-five from holding positions in the households of "non-Aryans" shows that the writings of Chancellor Hitler (see p. 70 of *Mein Kampf*), attributing sexual perversion to Jews are the very essence of official policy and public law.

[57] The ritual murder number of *Der Stürmer*, a newspaper edited in Nuremberg by Herr Julius Streicher, the National Socialist Government Leader of Franconia, published on May 1st, 1934 the alleged records of ritual murders dating from 169 B.C. onwards.

[58] Chancellor Hitler's speech at the Nuremberg Congress of September 15th, 1935, for example, spoke of "Jewish Marxists" as the primary cause for Germany's difficulties. "If", he wrote in his book, *Mein Kampf*, "at the beginning of the war twelve or fifteen thousand of these Hebrew corrupters of the people had been held under poison gas . . . then the sacrifice of millions at the Front would not have been in vain" (p. 344). And, further, "Thus the Jew to-day is the great instigator of the complete destruction of Germany" (p. 279).

[59] See above, p. 114.

action toward them.[60] Each issue contains names of Jews and non-Jews who have been seen in public together, charging them with "Race Treason" and placing their names on the public pillory. In fact, all the National Socialist official newspapers make a regular feature of publishing names of non-Jews who are alleged to have had relations with Jews. In the following towns, among others, individuals have been placed in concentration camps on these grounds: Munich, Trier, Wesemuende, Nuremberg, Elbiag, Norden, Koenigsberg, Cologne, Nordhausen, Hanover, Stralsund, Karlsruhe, Dresden, Breslau, Halle, Brunswick, Juelich, Liegnitz, Goerlitz and Heidelberg.

As the *West German Beobachter* boasted, in its issue of August 21st, 1935, this propaganda of social ostracism has been successful. "The Jews' provocative behaviour has resulted in reports from numerous villages and towns indicating that Jews are barred from migrating to these localities. No property will be sold to them there, and all municipal facilities, such as municipal halls, baths, and theatres and also private places of entertinment, hotels, restaurants, moving picture theatres and cabarets are closed to them."

Chapter III

APPLICATION OF RACIAL LAW BY THE COURTS

The Courts of Germany have not only failed to safeguard the rights of equality and liberty which have become the basis of all civilized legal systems, they have even been transformed into instruments for the extension and application of the racial principle to matters unregulated by formal legislation or unreached by administrative decree.[1]

This development of their function has been made possible through the avowed abolition by the National Socialist *régime* of the three corner stones of judicial morality: equality of all men before the law; independence of judges; and the doctrine that only those acts are to come under the prohibitions of the law for which the law specifically provides (the maxim, in criminal law, *nullum crimen nulla poena sine lege*). These fundamental guarantees of civilized justice[2] have been rejected as non-German,[3] "non-Aryan",[4] and as Judeo-Roman[5] in origin.

Therefore, in order to co-ordinate the administration of National Socialist law with the basic philosophy of the *régime*, equality before the law has been replaced by the doctrine of racial inequality; the independence of the judiciary has given way before the *Führerprinzip* that judges are agents of the Party and that tenure of office is dependent upon their administration of the political and moral standards of the Party, rather than upon the application of abstract justice; and the principle forbidding arbitrary judicial decisions has been abolished in favour of unlimited latitude given the Courts to adjudicate and penalize whether or not a law or a right has been violated.

1. The Doctrine of Racial Inequality Before the Law

The Programme of the Party, adopted at Munich on February 25th, 1920, declared that:

> "Only those who are of German blood, irrespective of religion, can be members of the German national community (*Volksgenosse*). No Jew, therefore, can be a member of the national community."[6]

This syllogism is more than a mere party programme. It is the fundamental law of Germany to-day. The *National Socialist Correspondence,* an official publication, declared in August, 1935, that the Programme of the Party was *ipso facto* the constitutional law of the Reich and needed no further legislation to render it the supreme judicial code. This was especially so, the official statement ran, in its provisions respecting Jews who are "neither racial comrades nor citizens but who rather stand under the law regulating aliens".[7] In fact this definition excluding Jews from membership in the national community has been taken over into the Law of September 15th, 1935, promulgated by Chancellor Hitler at the Party Congress at Nuremberg.[8] Establishing a distinction between German citizens and those entitled merely to formal registry as residents in German territory, this law provides that only citizens (that is, those of German "Aryan" blood

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[60] The issue No. 7 of February, 1934, for example, declares that: "Our knowledge of the Jewish question has led us to the opinion that all Jews should, in fact, be castrated. They all have the same blood which leads them to violation. They all have the Talmud which permits the violation even of non-Jewish children." Other suggested punishments are too obscene to be repeated here.

[1] For a descriptive analysis of the laws which the Courts have been called upon to administer in application of the racial formula, see above, Chapter I.

[2] "Out of this heterogeneous mass of prescriptions which make up the criminal law of the western world, there emerge a few general principles in the nature of limitations on arbitrary power, whether of the sovereign or of the law itself. The most important of these, inherited by the United States from the English law, may be stated in the language of the Bill of Rights of the American Constitution, viz. that no person shall be 'deprived of life, liberty, or property without due process of law . . .'

"Analogous to these is the 'rule of certainty', which prescribes that every act made punishable by law shall be so clearly defined as to leave no penumbra of uncertainty as to its applicability to a given case, and finally the rule denying any retroactive effect to a penal law. The last of these, embodied in the maxim *nullum crimen nulla poena sine lege* was the first rule laid down by Livingstone in his draft codes for Louisiana and the United States."

G. W. Kirchwey, "Criminal Law", *Encyclopaedia of the Social Sciences,* New York, 1931, IV, p. 574.

[3] *Denkschrift des Preussischen Justizministers,* Berlin, 1933, p. 127 (hereafter cited as *Denkschrift).* See also Karlbach in *Juristische Wochenschrift,* 1934, p. 2,232. It would be an injustice to let such a gross misconception pass as a libel upon the true contribution of German culture to civilized jurisprudence. No less an "Aryan" authority than Prof. Carl Ludwig von Bar, of the University of Göttingen, wrote:

> "The significant bearing upon the world's history customarily ascribed to the Roman Law as a factor in assisting the individual human being to assume a position of importance 'per se' and to acquire a position of independence towards the State is contrary to fact. These results were obtained only when the Germanic ideal of law had impressed itself upon the progress of humanity." *A History of Continental Criminal Law,* Boston, 1916, p. 19.

[4] Helmut Nicolai, *Die Rassengesetzliche Rechtslehre* (Nationalsozialistische Bibliothek, Heft 35), Munich, 1933, *passim.* Also Judge G. R. Schmelzeisen, *Des Recht im Nationalsozialistischen Weltbild,* Leipzig, 1934.

[5] Programme of the National Socialist Party, Article 19, signed by Adolf Hitler in Munich, February 24th, 1920: "We demand that the Roman law which serves the materialistic world order shall be replaced by a popular legal system." Gottfried Feder, *Was will Adolf Hitler?* (Munich, 1932). See also H. Nicolai in *Juristische Wochenschrift,* 1933, p. 2,315.

[6] See p. 105.

[7] *New York Times,* August 11th, 1935, p. 19.

[8] For the text of this law see above, p. 105.

and of the proper political views) may exercise civil and political rights.

Thus, the Courts are bound to apply as a fundamental law the principle of the inequality of race and blood as a decisive judicial rule in all cases brought before them. The rights of a German "Aryan" citizen must, necessarily, be accorded the greatest weight in any judicial proceeding, and must be given precedence over those claimed by "non-Aryans".

This method of administering justice is in conformity with the definition of the law given by Alfred Rosenberg, Leader of the Department of Foreign Affairs of the National Socialist Party: "Law is what the Aryan man deems to be right; legal wrong is what he rejects".[9] The protection of the rights of the "Aryan" against the "non-Aryan" is, therefore, the principal purpose and function of the law and the Courts.[10] "The duty of justice consists in the preservation of the purity of species, the protection of race."[11] Therefore, even before the promulgation of the Laws of September 15th, 1935, which prohibited marriage between "Aryans" and Jews, as well as intimate relations between them, we find that the Courts acting in conformity with this injunction consistently fulfilled their function of protecting the "Aryan" race against such "non-Aryan" invasion, which, however, was not then forbidden by law.[12] The legislation of September 15th merely gives the Courts a statutory basis for the extra-legal action which they had previously taken of their own accord in applying the racial principle as a fundamental rule.[13]

2. *Judges as Agents of the National Socialist Party*

The *Führerprinzip,* namely, that all public officials must express the will of Adolf Hitler, has been applied to the German judiciary both in respect of tenure of office and of the content of the law which they are to apply. As the official commentary upon the centralization of the administration of justice in the Reich pointed out,[14] all judges in both civil and criminal courts are intended to be the personal appointees of Chancellor Hitler and may be dismissed at his will without reasons being given. "The Judge", declared Premier Goering of Prussia, at the ceremony celebrating this centralization, "must be an active supporter of the National Socialist viewpoint."[15]

This "viewpoint" which the Courts are bound to apply and "actively support" with regard to the "non-Aryans" of Germany is that embodied in the will of Chancellor Hitler. For, as Minister Goering explained on July 12th, 1934, before the prosecuting officials of Prussia: "The law and the will of the *Führer* [Hitler] are one."[16] The "will of the Führer" as to the legal position of "non-Aryans" has been clearly expressed, and may be determined by reference to his published writings[17] and speeches.[18] On the basis of these declarations, it may be concluded that apart from any specific legal disabilities imposed by legislation, the Judges of Germany are bound by law and by the terms of their office to regard "non-Aryans" as a dangerous and fundamentally criminal element, devoid of morality, biological and intellectual inferiors, and deserving of no protection for whatever civil or legal rights they may still dare to claim.[19]

3. *Latitude Given to Judges through the Abolition of the Guarantees of a Fair Trial*

The principle that only those acts are crimes or are to come

[9] 2 *Deutsches Recht* (1934), p. 233.

[10] "The Police are not a defence squad for Jewish stores. . . . They tell me I must call out the police to protect them [the Jews, who were being boycotted through official instigation]. Certainly I shall employ the police, and without any mercy, wherever German people are hurt, but I refuse to turn the police into a guard for Jewish stores. . . ."—GEN. GOERING, March 10th, 1933, as then Minister of the Interior of Prussia, reported in the *London Times,* March 11th, 1933.

[11] Nicolai, *op. cit.,* p. 33. In order to carry out their function as protectors of the "Aryan" race, the Courts have been applying in wholesale fashion a sterilization law of unprecedented severity (*Reichsgesetzblatt,* I, p. 529). It was officially announced in *Deutsche Justiz,* the organ of the National Socialist Lawyers Union, that during the year 1934 no less than 56,244 sterilizations had been ordered by the German Courts, an average of over 1,000 each week. 6,550 individuals in Berlin alone were sterilized during the year; and the same fate was decreed for 2.56 of every 1,000 inhabitants of Karlsruhe and 2.22 of Hamburg. Furthermore, 96 per cent. of the sterilizations were ordered on mental grounds, rather than because of any heritable physical malady. Of all alleged causes for sterilization, mental aberrations are considered the least valid by scientific authorities, for it is doubted whether they may actually be transmitted to the offspring in all cases.

[12] For instances of this type of judicial "legislation", see cases cited below, pp. 120-124.

[13] The leading legal officials of Germany have been preparing further legislation of this type, of which the Laws of September 15th are merely a foretaste. Thus, the official *Denkschrift* of the Prussian Minister of Justice, which establishes the outlines of a new penal code, contains a section entitled "Schutz von Rasse und Volkstum: Angriffe auf die Rasse", which provides for three new crimes: *Rassenverrat* (race treason); *Verletzung der Rassenehre* (violation of race honour); and *Rassengefährdung* (endangering the race). See also the discourse of Reichsminister of Justice Frank before the *Reichstagung des Bundes Nationalsozialistischer Deutschen Juristen,* September 30th, 1933, quoted in 1 *Deutsches Recht* (1933), p. 195.

[14] Dr. George Schroeder, member of the Ministry of Justice, in the Ministry's official organ, *Deutsche Justiz,* of April 18th, 1935.

[15] "The final authority as to the principles of the German State and the German Law is the National Socialist Party." *Official Procedure for the German Legal Profession,* printed in the *Juristische Wochenschrift,* No. 29, July 21st, 1934, p. 1,763.

[16] That this statement is no mere figure of speech is indicated by the fact that it was used to justify the assassinations of June 30th, 1934. For, at the same meeting, Goering explained: "Now that this action, which was law in itself, has in addition been formally legalized, no authority can claim the right to probe into it." (*New York Times,* July 13th, 1934.) Chancellor Hitler, explaining his actions before the Reichstag on July 13th, 1934, declared: "If someone questions me why we did not invoke an ordinary Court to deal with the men, I can only tell him: In that hour, I was responsible for the fate of the German Nation; therefore, the Supreme Court of the German people during those twenty-four hours consisted of myself." (*New York Times,* July 14th, 1934.)

[17] In his work, *Mein Kampf* (My Struggle), Chancellor Hitler wrote: "When I defend myself against the Jew I fight for the work of the Lord"; "The black-haired Jewish youth lies for hours in ambush, a Satanic joy in his face, for the unsuspecting girl whom he pollutes with his blood and steals from her own race. By every means he seeks to wreck the racial bases of the nation he intends to subdue" (p. 357). These quotations are taken from the 12th Edition, published in Munich in 1933.

[18] Before the Party Congress of September, 1935, Chancellor Hitler declared that the first of the three groups "who were guilty of the German collapse" was the Jewish Marxists and their kindred, "the Parliamentary Democrats. . . ." In another discourse he said: "Capitalistic Jewry has never had any art of its own. Even the Temple of Jerusalem had to be completed by foreign artists. We do not intend to let the degenerate artists loose on our people." (Reported in the *Manchester Guardian,* September 12th, 1935.)

[19] The extent to which this viewpoint has pervaded the German legal system will be seen in the cases described below, pp. 120-124.

under the prohibitions of the law for which the law provides, and its corollaries prohibiting punishment imposed on the basis of retroactive legislation and the use of analogy, are properly acknowledged as "general principles of law recognized by civilized nations". They have served as limitations upon the arbitrary power of judges, sovereigns, and even the law itself, to safeguard the humanity of the judicial process and the liberty of the parties before the Courts.[20] The abolition of these basic guarantees permits the Courts of Germany arbitrarily to punish whether or not a law has been violated and to deny civil rights to "non-Aryans" whether or not these rights be protected by law. It establishes a *régime* of ambulant justice.

The culmination of this revolution in legal administration is the law passed by the German Reichstag on July 5th, 1935.[21] It replaces Section 2 of the former German Criminal Code by the following provisions:

> "Whoever commits an act which is declared a crime by law, or which deserves punishment according to the basic ideas of the Criminal Code, and according to the true feelings of the people, is to be punished."
>
> "Where no particular provision of the Criminal Code is directly applicable, the act will be punished by applying that provision, the underlying principle of which is the most appropriate to the act in question."[22]

Dr. Frank, Reich Minister of Justice, has interpreted these amendments to mean that judges can impose a sentence even if the act in question is not a penal offence, provided that it is similar to another act that is a penal offence, and provided that it merits punishment according to "healthy public opinion".[23]

Another departure from the traditional method of administering justice is the imposition of punishment by the application of laws passed after the act in question was committed; hitherto, this *ex post facto* punishment had been forbidden by the rule of non-retroactivity. Not only was this principle consecrated in Art. 116 of the Republican (Weimar) Constitution, it was at the head of the German *Strafgesetzbuch* (§ 2, par. 1). It was this Section which was repealed by the Law of July, 1935:

> "An act can be visited with a penalty only if the penalty was determined by law before the act was committed."[24]

These new and radical methods of administering justice have, as we shall see, profoundly affected even the minimal rights which have been left to "non-Aryans" by the legislation of the Reich. The almost unlimited power given the National Socialist judge; the abolition of judicial safeguards for the accused; the requirement that the judiciary serve the National Socialist viewpoint which regards "non-Aryans" as *prima facie* culpable and places their rights upon a plane inferior to those of "Aryans"; the replacement of objective legal tests by the subjective will of the judge[25]—all of these principles of the new German judicial administration have not only rendered useless appeals by "non-Aryans" to the Courts for the defence of even those few rights still left to them, but have also provided the means of extending the dogma of racial inequality to spheres and cases left untouched by legislation. The manner in which these rights are regarded and the method by which these doctrines are applied in specific instances will be seen from the citations which follow.

Marriage and Divorce

Although until September 15th, 1935, there existed no formal law forbidding marriages between "Aryans" and "non-Aryans," the German Courts in numerous instances upheld and justified local officials who had refused to perform such marriages, and granted divorce to the "Aryan" party on the grounds of the racial principle.[26]

The leading case on this subject was that decided by the

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[20] As was shown above, p. 118, note 3, these principles are not of Roman origin, as the Prussian Minister of Justice mistakenly supposes. They were, historically, a victory of modern civilization over arbitrary feudal law. For example, the liberal Austrian (but certainly "Aryan") Code of Joseph II in 1787 abolished condemnation by analogy (Part I, Sec. 1, Part II, Sec. 3), quoted in von Bar, *op. cit.*, p. 252. Furthermore the Bavarian Criminal Code of May 16th, 1813, in its very first article forbade the resort to analogy for the purpose of imputing criminality to an act. "For it is upon this principle", ran the official annotation to the Code (I, p. 66), "that the security of the state and every individual depends."

[21] *Frankfurter Zeitung,* No. 339, July 6th, 1935; *Reichsgesetzblatt,* I (1934), p. 839.

[22] This law apparently was drafted by the Official Penal Law Committee of the Ministry of Justice. F. Gürtner, *Bericht über die Arbeiten der Amtlichen Strafrechtskommission,* Berlin (1934), p. 132.

[23] *Völkischer Beobachter,* July 5th, 1935. It is evidently on the strength of a similar innovation in legal procedure that the Law of July 14th, 1933, *(Reichsgesetzblatt* (1933), No. 81, p. 479) for the confiscation of the property of Communists and elements hostile to the state has been applied to such organizations as the following: The *People's Society for a Catholic Germany (Reichsanzeiger,* March 7th, 1935, No. 56, p. 1); *The German Catholic Peace Society, the League for the Protection of Mothers,* and the *Free School Association (Reichsanzeiger,* January 18th, 1935, p. 2.)

[24] Yet, even before the repeal of this Section of Germany's fundamental law, the National Socialist Party had violated the principle of non-retroactivity embodied therein by the passage of the *Gesetz über Verhängung und Vollzug der Todestrafe* on March 29th, 1933 *(Reichsgesetzblatt,* I, p. 151). This law, popularly called the "Lex van der Lubbe" with reference to the special case for which it was designed, imposed a retroactive punishment of death for certain acts committed between January 31st and February 28th, 1935, which at the time of their commission would have been more lightly punished.

Also, it should be noted that the abolition of the principle *nullum crimen nulla poena sine lege* fulfills the same desired purpose as the repeal of non-retroactivity by breaking down a plea based upon the non-existence of a certain prescribed punishment at the time of the commission of an act.

[25] The *Denkschrift* of the Prussian Minister of Justice (p. 124) heralds a new law which would punish "criminal intent" *(Gefährdungsrecht).* Under this rule, the intent to commit a misdeed is punished as severely as the crime committed. No objective proof of intent, of course, can actually be adduced, so that only a simple "moral purpose" *(Seelischer Befund)* will be sufficient to impose criminal responsibility. For an expression of alarm at this subjective criminal law, written by a jurist in Germany, see Mezger, "Willenstrafrecht, Gefährdungsrecht und Erfolgstrafrecht", in *Deutsche Juristen Zeitung.* Mezger writes, "the vague principle of 'criminal intent' can only wipe out the distinction between a legal act and a crime. If an objective definition of crime is also abolished, the result will be the complete anarchy of criminal law and the loss of all existing guarantees".

[26] For a discussion of the racial principle applied to the dissolution of marriages between "Aryans" and "non-Aryans", see the following:—von Jung, *Juristische Wochenschrift* (1933), pp. 2,367 ff.; Schumacher, *Deutsche Juristen Zeitung* (1933), pp. 1,492 ff.; Wohrmann, *Deutsche Justiz* (1933), pp. 818 ff.; Schneider, *J.W.* (1934), pp. 868 ff.; and, in addition to the cases cited below, see the arguments advanced by the *Reichsgericht J.W.* (1933), p. 2,041, and the *Oberlandesgericht* of Köln *Deutsche Justiz* (1933), pp. 819 ff.

Oberlandesgericht (Court of Appeals) of Karlsruhe.[27] An "Aryan" clergyman appealed to the Court to annul his marriage with a "non-Aryan" woman, who at his behest had been baptized as a Christian, arguing that the National Socialist *régime* had taught him the importance of racial distinctions and that, upon the strength of this new knowledge, he could no longer continue to live with his racially inferior wife. The Court granted the dissolution of the marriage, and in the course of its opinion wrote:

> "It has now been established that the Jewish race is something quite different from the Aryan race in regard to blood, character, personality and outlook on life, and that a connection with a member of this race is not only undesirable for a member of the Aryan race, but destructive, dangerous and contrary to nature. It estranges the Aryan as an individual, especially in his capacity as member of the racial community (*Volkstum*), from his nation and furthermore places him in the dangerous position of begetting children of a different species. . . . The contrast of races, as it has now been established, is so radical that in the future it will hardly ever lead to marriage between Aryans and non-Aryans."

Since, the Court concluded, the element of race is the decisive factor of personality, the "Aryan" man would not have contracted the marriage originally had he then known its importance. The marriage, therefore, should be annulled on the ground of error.[28]

Another decision to the same effect, annulling a marriage concluded seven years previously, was handed down by the State Court of Breslau in May, 1934. The Court declared that:

> "Personality is to a certain degree founded upon blood and race. Miscegenation between members of the Aryan and non-Aryan races produces a hybrid offspring."[29]

The same grounds for dissolution of marriage were given by the Superior Court of Celle in a decision of November 5th, 1934.[30]

A second category of decisions has served to sustain the refusal of local officials to perform marriages between "Aryans" and "non-Aryans." For example, on July 1st, 1935, the Municipal Court of Wetzlar dismissed an action brought by an "Aryan" against the local registrar (*Standesbeamter*) who refused to legalize a marriage between the complainant and a Jewess.[31] The registrar refused to perform the marriage on the grounds that as a National Socialist he would not agree to a mating between a man of German blood and a Jewess. The petitioner argued that no law was in existence forbidding such a marriage, and asked the court to order the registrar to fulfil his legal duty.

The Court, disallowing the appeal of the "Aryan" petitioner, acknowledged the fact that "the existing legal provisions do not prohibit marriage between a man of German blood and a Jewess". But, it held:

> "This argument shows a typically Jewish liberalistic mentality and legal casuistry. The principle that 'What is not expressly forbidden is permitted' would render German law and German morals more or less ineffective. The National Socialist conception of law and morality, on the contrary, is re-introducing the old, typically German rule of obedience as the duty of each individual. . . . The marriage of a man of German blood to a Jewess is absolutely irreconcilable with this principle."

In explanation of these new principles which, without a law to that effect, could be used to prohibit such a marriage, the Court declared:

> "When National Socialism seized power in Germany the foundation and underlying principles of the National Socialistic *Weltanschauung* immediately became the basis for the new political and social structure of the German Empire. . . . Similarly, the legal conceptions and methods of administering justice implicit in that viewpoint became as rooted in the new Germany as the new legislation of the Empire. The law concerning the purging of the civil service, the hereditary homestead act, and the conscription law are the most striking expressions of this new spirit. These fundamental laws are permeated with the conviction of the direful effects, both physical and spiritual, of a blood-mixture of men of German origin with members of an alien race or foreign blood, particularly Jews. . . . In the light of these principles, embodied as they are in all parts of the legislation and all official and semi-official writings of the Government and the National Socialist Party, it would be a slap in the face to permit further inter-marriages. . . ."[32]

Children

The racial principle, as applied by the German Courts to the custody and upbringing of children, has without legislation to that effect established the rule that only on "Aryan" parent may care for an "Aryan" child, whatever may be the character, needs, or respective rights of the parties in question. Thus, if a "non-Aryan" wife obtain a divorce from her "Aryan" husband on the grounds of his misconduct, and if, according to the law of racial heredity the child of that marriage be an "Aryan,"[33] the mother will be refused the right to have the custody of the child because she is considered racially different from her offspring.[34]

This principle has been applied to the guardian-ward relationship, the Prussian Court of Appeals having decided that only an "Aryan" may be appointed guardian for an "Aryan" ward.[35] It has also been made a rule in adoption cases. The

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[27] March 2nd, 1934, reported in 22 *J.W.*, p. 1,371, and in the *Völkischer Beobachter* of March 8th, 1934, where the decision appeared under the headline: "A Landmark in the History of German Jurisprudence."

[28] It is true that the German Supreme Court, upon appeal, refused to sustain the decision of the *Oberlandesgericht (J.W.* (1934) pp. 2,613-5). But it did not overrule the conclusion of law which the lower court expressed—namely, that race is the decisive personal "quality" of a spouse; and based its refusal to grant the divorce on the issue of fact involved, i.e., whether the Aryan clergyman was or was not aware of this personal "quality" of his wife at the time of marriage (p. 2,613). The Supreme Court believed that he was, since, as a clergyman at the time of marriage, he had not yet learned the laws of biology and the racial theory (p. 2,615).

[29] *New York Times,* May 21st, 1934.

[30] *Deutsche Justiz,* April 5th, 1935.

[31] *Frankfurter Zeitung,* July 2nd, 1935.

[32] The same decision has been handed down in numerous instances; see particularly, *Deutsche Justiz* (July 31st, 1933), p. 1,086.

[33] The dialectic by which this totally unscientific result is obtained is explained above, p. 107.

[34] See decision of the Guardian Court of Hamburg, January 8th, 1935, quoted from the *Hanseatische Rechts und Gerichts-Zeitschrift* and reported in the *Frankfurter Zeitung,* April 14th, 1935.

[35] *Deutsche Justiz* of May 24th, 1935.

Reichsgericht in a decision of February 11th, 1935, expressed its doubt that a child (racial origin unknown) adopted by an "Aryan" mother and a "non-Aryan" father could be brought up to be a "German man".[36] In addition, the Berlin *Landgericht* has decided that the adoption by an "Aryan" of a "non-Aryan" child is null and void as contrary to the moral concepts of the National State when the purpose of such an adoption seems to be to change the name of the child and thus mask its racial identity.[37]

Even if mother, father and child be "Aryan", and the parent given the custody of the child after divorce contract a second marriage with a "non-Aryan", the child will be taken away and placed in a more suitable racial environment. This was decided by the *Landgericht* of Berlin on May 15th, 1934.[38] The "Aryan" mother and father of "Aryan" children having been divorced owing to the father's misconduct, the mother was given the custody of the children. Many years later, the mother married a Hungarian Jew. The father who had failed to contribute to the maintenance of the children since the divorce, asked the Court to take the children away from the mother on the ground that their physical and mental well-being was endangered by the "non-Aryan" origin of their stepfather. Despite the fact that the children wished to remain with their mother, the Court recognized the father's demand and transferred the children to him. The reason given by the Court was that "the German Reich needs every boy and girl of German origin." The allegiance of the children to the Reich would, the Court believed, be placed in peril by the "non-Aryan" environment of their new household.[39]

The judgments of the Courts with regard to the environment and upbringing of "Aryan" children would seem to imply that an "Aryan", even though he be fortified by the proper racial heredity, may through contact with "non-Aryan" influences be weaned away from the proper path. An example of this solicitude was given by the Municipal Court of Verden,[40] in a case where an "Aryan" guardian asked the Court to ratify an apprenticeship agreement which he had made in the name of his "Aryan" ward with a "non-Aryan" merchant (this ratification being required by law). The Court refused to sanction such an agreement as being contrary to the interests of the "Aryan" ward. The Jewish race, argued the Court, is in such sharp contrast to the German character that the education of a German minor should not be put into the hands of a Jew, where there would be no opportunity to become acquainted with the fundamental ideals of the National Socialist *Weltanschauung*.

Lawyers, Judges, Arbitrators, Etc.

Lawyers, Judges and Arbitrators of "non-Aryan" descent having been excluded by statute from their position,[41] the Courts have been called upon to extend the racial formula to areas overlooked by the legislators. The manner in which their discretion has been exercised in extension of the law was well illustrated by the decisions of the Berlin Labour Court (*Arbeitsgericht*)[42] and the Superior Labour Court (*Landesarbeitsgericht*)[43] on June 20th and July 27th, 1933, respectively. Although there could be found no legal provision prohibiting a Jewish lawyer from representing an association of employers before the Berlin Labour Court, the Court refused to interpret the intent of the legislature as leaving to a Jewish representative of an employers' association more rights than a Jewish lawyer would have in an ordinary Court. The Superior Labour Court, to which an appeal was taken, sustained this decision by pointing out that a revolutionary legislature naturally leaves loopholes which the Court should fill in by applying the National Socialist viewpoint (*Weltanschauung*).

Even in cases where, by an exception of the law in favour of Front Soldiers, "non-Aryan" lawyers are still permitted to practice, their rights have been denied. For example, in May, 1935, the Labour Court of Magdeburg refused the right of such a Jewish lawyer still permitted to practice to appear before it.[44] According to the rules of the Court, it had the right to exercise its judicial discretion in admitting lawyers; consequently, since it was not compelled to admit the Jewish lawyer, it exercised its right to reject him. Similarly, the *Oberlandesgericht* of Frankfurt[45] decided on May 24th, 1935 that no Jewish lawyer, even if he be still allowed to practice, has any right or claim to be delegated by the judicial authorities as counsel to a poor person. The *Oberlandesgericht* of Hamm held on March 23, 1935 that "the spirit which has prevailed since the national uprising with regard to a justice closely connected with nation and race demands that German litigants shall not be represented by counsel of a foreign race".[46]

The residual rights of the few Jewish judges who were exempt from dismissal by virtue either of active war service or tenure of office before 1914 have similarly been compromised and denied. For, as numerous Court decisions have held, their impartiality and their judicial capacity may be challenged by any of the parties, and their right to try a case will be denied by a Court to which an appeal is taken. Thus, a National Socialist, bringing an action against a "non-Aryan" debtor, refused to have his case tried before a Jewish judge in Berlin. The *Landgericht* of Berlin, called upon to decide this question of the competence of the Judge, gave a judgment on November 10th, 1935 which, instead of restricting the right of the plaintiff to make libellous statements before the Court concerning the racial origin of the Jewish defendant and the Judge, confined itself to removing the latter as lacking the "necessary impartiality".[47] The Berlin *Kammergericht* on March 5th, 1934

[36] *Juristische Wochenschrift* (1935), p. 1,410.
[37] *Ibid.* (1934), p. 443.
[38] *Ibid.* (1934), p. 1,516.
[39] A similar, but exceptional, case came before the Supreme Court of Bavaria *(Bayerisches Oberster Landes Gericht)* upon the petition of the official German Youth Department to remove an "Aryan" child from his "Aryan" father's care because the latter had, after the divorce granting him custody of the child, contracted a marriage with a Jewish woman. The Youth Department (Jugendamt) protested that the influence of the Jewish stepmother would lead to the mental degradation of the child; and that in contracting this second marriage the father had acted *contra bonos mores* and was therefore unfit as a parent. The Court, in its decision of October 3rd, 1934 (reported in *Juristische Wochenschrift*, 1935, p. 136), while admitting that marriage of an "Aryan" to a Jewess was an act *contra bonos mores* and that children of a mixed marriage were an undesirable addition to the German population, believed that there was a possibility that the stepmother would give adequate care to the child. It decided, therefore, for the time being to await the results. This decision evoked a storm of protest, and was followed in the *Juristische Wochenschrift* by an editorial comment which pointed out that it violated the laws of life and common sense *(widerstreitet den Lebenserfahrungen und einfachen Denkgesetzen)*.
[40] *Frankfurter Zeitung*, No. 396, August 6th, 1935.
[41] See above, p. 108, for a full description of these laws.
[42] *Juristische Wochenschrift* (1933), p. 1,794.
[43] *Ibid.*, p. 2,788.
[44] Reported in the *Frankfurter Zeitung*, July 24th, 1935.
[45] *Juristische Wochenschrift* (1935), p. 1,509.
[46] *Ibid.*, (1935), p. 35.
[47] *Ibid.* (1934), p. 442. The Judge in question had already been removed from the Criminal Courts to a lower Civil Court of original jurisdiction, in accordance with the laws on the judiciary. The *Frankfurter Zeitung* of April 16th, 1934, commenting upon this decision, admitted that it demonstrated the difficulties faced by "non-Aryan" judges.

also upheld this rejection of a Jewish Judge upon the plea of one of the parties that it was contrary to his National Socialist view of life to have his rights adjudicated by a "non-Ayran".[48]

The leading decision upon the validity of an arbitral award handed down by a panel of arbitrators, one of whom was a "non-Aryan", was that given by the Hanover *Landgericht*[49] on March 26th, 1934. The "non-Aryan" arbitrator was appointed as early as 1930, and had been a Front Soldier during the war. The Hanover Court, acting on the basis of a law providing that either party may reject an arbitrator of "non-Aryan" descent (no exception being made for war service) set aside *the award* which had *already* been handed down by the arbitral panel on the grounds that one of the arbitrators was a Jew, and that therefore the whole award was void.

Furthermore, although no statute had been enacted forbidding "non-Aryans" from acting as Referees for the administration of estates *(Zwangsverwalter)*, the Berlin *Landgericht* on October 5th, 1933 decided that a Jew (in this case one who had seen service during the war) could be immediately discharged from his position.[50] The Court based its decision upon the popular feeling aroused against the Jewish people which "made it seem inadvisable to retain a Jew in such an office, even without a special law to that effect".

The same disregard for acquired rights and the same method of extending the racial doctrine beyond the terms of the formal legislation have been shown in the decisions regarding "non-Aryan" executors of wills. On October 9th, 1933 the Berlin *Landgericht*, upon the application of one of the heirs, dismissed a Jewish Executor *(Testamentsvollstrecker)*, who had been appointed by the testator after the Hitler *régime* had laid down the racial laws.[51] The Court explained that, despite the will of the deceased and his knowledge of the new political system, "it is the first fundamental principle of the new law to expel all persons of alien race from public offices and functions, such as the office of an Executor of a will, who has to rule upon the fate *(wohl und wehe)* of German men".

Yet, even where the *"wohl und wehe* of German men" is not in question, the Courts do not hesitate to violate the expressed intent of the deceased and the terms of his will in order to extend the racial rule. Thus, there was reported in *Jugend und Recht* of July 15, 1935 an important case wherein a Surrogate Court, called upon by the executors to appoint a Jew to replace an executor who had died, refused to comply either with the demand of the executors or the terms of the will.[52] The original will had been made by a Jew who had died in 1900, and had established a trust of five million marks to foster artisanship and agriculture. The Testator had appointed a Board of Directors, composed entirely of his co-religionists, and a number of executors, also of his faith, with the stipulation that upon the death of any of the executors, the Surrogate Court should "appoint a suitable person from the members of the Board of Directors or, from other members of the Jewish community". Despite the clear wording of the deceased's will, the Court held that the new legislation of the National Socialist Government had now set forth the rights and duties of Jews; and that since it was nowhere expressly provided that Jews may be permitted to be executors, the Court in accordance with the prevailing legal principles would presume that the right did not exist. It therefore refused to appoint a Jew. This decision was, furthermore, supported by the Ministry of Justice, which acts as a final board of appeals on such trusts and endowments.

[48] *Ibid.* (1934), p. 1,178.
[49] *Ibid.* (1934), p. 1,684.
[50] *Ibid.* (1934), p. 1,178.
[51] *Ibid.* (1933), p. 2,406.
[52] *Frankfurter Zeitung*, No. 356, July 20th, 1935.

Business and Commerce

The only statutory provisions restricting the rights of "non-Aryans" to conduct their business and commerce are the Instructions Regarding the Granting of Public Orders of August 4th, 1933, for the Reich[53] and the Prussian Ordinance of August 30th, 1933.[54] But, the Courts without legislative authorization have consistently applied the "Aryan" paragraph to commercial contracts, employment agreements, unfair competition, debtor and creditor relationships, in addition to supporting and legalizing the boycott of Jewish business which has been conducted under the auspices of the National Socialist Party.[55]

The Court of Appeals of Marienwerder in June 1935 was asked to decide whether the alleged assertion by a Jewish merchant of Schneidemuehl that a leading National Socialist had bought an overcoat in his shop constituted a slander. Although the Court of Appeals referred the case back to the lower court because of insufficient evidence that the statement had actually been made, it had this to say on the question of law involved:

> "Those German subjects who even to-day buy from a Jew cannot be considered as belonging to that part of the German people which represents public opinion. German public opinion condemns a purchase from a Jew as an immoral, unethical act."[56]

Therefore, in the Court's opinion, if the Jewish merchant had made such a statement about any member of "German public opinion", a cause of action for slander would arise.

A similar sanction was given the boycott of "non-Aryan" business by the decision of the Municipal Court of Eberswalde.[57] A "non-Aryan" owner of an Automobile Driving School attempted to obtain an injunction restraining the local Leader of the Party from continuing to post on a wall near the petitioner's place of business a list of Jewish shops and firms to be boycotted, among which was the name of the complainant's Automobile School. The Court refused the injunction on the grounds that under prevailing conditions in Germany every German had a right to learn whether or not a firm was Jewish.

Likewise, the Hamburg *Amtsgericht* decided on June 29th, 1935, that an "Aryan" woman whose "non-Aryan" husband had been forced to leave Germany as a refugee could not obtain damages against a member of the National Socialist Party who had publicly spread the warning that the complainant operated a "Jewish business" and who for that reason had urged a boycott of the shop.[58] Since, the Court argued, the plaintiff although an "Aryan" was still fond of her "non-Aryan" husband after living with him for fifteen years, and since he as a refugee could not be expected to be working for the glory of Germany abroad, the business of the complainant was properly designated a "Jewish" one.[59] Furthermore, according to the Program and orders of the National Socialist Party, the defendant was bound to call the attention of his fellow-comrades to the necessity of boycotting such an enterprise. The Court pointed out that the slogan "Don't Buy from Jews" had been adopted as a funda-

[53] *Reichsanzeiger*, No. 180, August 5th, 1933.
[54] Prussian *Ministerialblatt*, I, p. 1,277.
[55] For evidence of the connection of the Party with the boycott, see above, p. 108.
[56] *Frankfurter Zeitung*, July 1st, 1935.
[57] *Ibid.*, No. 370, July 23rd, 1935.
[58] Reported in *Juristische Wochenschrift* (1935), pp. 2,763-4.
[59] The Court thereby accepted *verbatim* the boycott definition of the National Socialist Party of March 30th, 1933, which was signed by Streicher. Article 5 of the Proclamation ran: "If the husband of a non-Jewish proprietress is Jewish, then the enterprise is considered Jewish."

mental law in Germany, for "the objectives of the Party and the objectives of the State are one and the same". This was all the more true because, as the judge observed, "the German people have in the overwhelming majority accepted the principle that the Jews are mainly responsible for German suffering". Jews, conceded the Court, are not without rights; but their rights are only those of guests of the National Socialist State. Therefore, a German Court could not deny the right of a German to encourage the boycott of the shop in question.

Nor, according to the decision of the Prussian Court of Appeals, has a firm owned by "non-Aryans" or employing "non-Aryans" the right to call itself a "German business".[60] The Prussian Court decided that the designation "German" was understood to mean "Aryan", and that it would be unfair competition for a firm owned by "non-Aryans" to advertise without indicating the racial origin of its proprietors.

Even the *Reichsgericht* has sustained this distinction between a "German" and a "Jewish" business, and has forbidden as unfair competition the use of any company name unless it clearly indicates the "non-Aryan" origin of its owners. Thus, on July 12th, 1934, this highest judicial authority in the Reich,[61] forbade the *Dampfsäge und Hobellwerk Germaniamuhle Gmbh* from using the word "Germania" in its corporation name, because the stockholders were predominantly "non-Aryan" and the word "Germania", according to the Court, meant not only "non-foreign" but also "non-Jew".[62]

The Courts have, despite the hesitation of the *Reichsarbeitsgericht* and the *Reichsgericht* in two exceptional instances,[63] refused to grant judicial redress to "non-Aryans" whose contracts have been terminated without notification. In a typical and leading case the State Labour Court of Frankfurt confirmed the decision of the Labour Court of Weisbaden which had refused to grant redress to a Jewess, who had been dismissed from her position as a result of a threatening letter sent her employer by the National Socialist Party. The dismissed employee was the sole support of her aged father and of a brother who had been disabled during the World War. She brought action on the grounds that there was no law requiring the dismissal of Jews from business employment and that the agitation of the National Socialist district group to have her dismissed was an unwarranted interference in private business. Both Courts rejected this plea on the grounds that conceptions of right and wrong had undergone a change in Germany and that the majority of the German people would not consider it wrong for an "Aryan" firm to dismiss its "non-Aryan" employees.[64] The Berlin *Landgericht* on November 17, 1933, also declared when a Jewish Manager of an Estate unsuccessfully claimed damages before it for wrongful dismissal: "It is the intention of the present government to restrict and even expunge the Jewish influence, particularly in all branches of cultural life."[65] This "intention of the present government" also is used to justify the decisive weight given by the Courts to the claims of "Aryans", whatever may be the legal rights possessed by "non-Aryans". Thus, the Naumberg *Oberlandesgericht* on January 5th, 1935, held that a German firm has the right to refuse payment of an uncontested debt if, by such payment "German" money would fall into the hands of a "non-Aryan" foreigner.[66] This right to refuse payment to "non-Aryan" creditors was, the Court said, in harmony with the principles of National Socialism. For, in the words of the decision: "According to the actual purified conception of the law, a debtor is entitled to refuse the execution of an obligation even if the performance thereof is contrary neither to law nor to morals, but yet would have the effect of bringing parts of the national property, especially real property, into the hands of a 'non-Aryan' foreigner, thereby harming the national community."

This method of fitting the law to the racial origin of the parties was well illustrated in two leading cases decided by superior German Courts. The first decision was that of the Berlin *Landgericht* on December 3rd, 1934,[67] and is significant not so much for the intrinsic value of the question involved as for an appreciation of the methods of juristic logic now in vogue in the German Reich. Since Chancellor Hitler's assumption of power, the Courts have established the rule that the wireless now belongs to that class of personal belongings which is exempt from being garnisheed in payment of a debt, the reason being that in the Third Reich it is considered the duty of every German to listen to the political speeches and announcements of the Government which are broadcast. In the case in question, however, the receiving set of a "non-Aryan" was garnisheed and this action was upheld by the Municipal Court on the ground that the general rule forbidding garnishee of wireless sets did not apply in the case of a Jew, because he was not expected to have the same rights and duties as a German citizen. The *Landgericht,* however, refused to sustain the lower Court's exception to the rule on garnishee. It gave as the reason for its loyalty thereto, not the principle that Jews have the same rights as German citizens, but the pragmatic fact that a Jew should listen on his set to important political speeches so as to inform himself on the conduct demanded of him by the new Government. An instrument of such vital political importance could not therefore be garnisheed.

The second case came before the German Supreme Court of Finance *(Reichsfinanzhof)* and was decided on December 20th, 1933.[68] The statute imposing a special tax for those departing from the Reich contained a provision to the effect that this tax did not have to be paid in cases where such emigration was in the interests of the German people or German economics. It was argued that Jewish refugees from Germany should therefore be exempt from this tax since the Government had in numerous instances declared that Jews were a destructive and dangerous element whose influence should be stamped out from German life.[69] Their emigration, consequently from the viewpoint of the Government, ought to be looked upon as desirable and in the interest of the Third Reich. The Court, however, decided that this tax would have to be paid for the reason that even if their departure were beneficial it could hardly be expected that a "non-Aryan" abroad would foster German thoughts and ideas. Although German industry encouraged exports, the departure of refugees was not considered particularly beneficial to the national economy.

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[60] *Jüdische Rundschau,* No. 42, May 24th, 1935.

[61] *Juristische Wochenschrift,* 1934, pp. 2,160-1.

[62] *Ibid.,* p. 2,161.

[63] The decision of the *Reichsarbeitsgericht* on October 25th and October 28th, was reported in *Juristische Wochenschrift* (1933), p. 122; that of the *Reichsgericht* on February 16th, 1934, *Ibid.* (1934), p. 1,963. Neither of them, however actually go so far as to assert that contract rights of "non-Aryans" must be upheld. The *Arbeitsgericht* expressed the hope that, since each case should be decided on its merits, the Courts would be more reluctant to permit violations of labour contracts as a general rule. The *Reichsgericht* argued from a practical viewpoint that the "non-Aryan" legislation was not intended to have an immediate effect in the commercial sphere, or German business would be harmed.

[64] *Frankfurter Zeitung,* March 12th, 1935.

[65] *Juristische Wochenschrift* (1933), p. 2,919.

[66] *Deutsche Juristen Zeitung* of May 1st, 1935; also 6 *Deutsche Justiz* of June 29th, 1935, p. 403.

[67] *Juristische Wochenschrift* (1935), p. 814.

[68] *Ibid.* (1934), p. 379.

[69] For examples of governmental invitation to emigrate, see below, p. 126.

These citations demonstrate the extent to which the dogma of "non-Aryan" inferiority and inequality before the law has permeated the legal system of National Socialist Germany. They explain why Jews and other "non-Aryan" elements can no longer look to the law for protection of their elementary civil rights, not to speak of their political liberties. Undoubtedly, the number of decisions of the same nature would have been multiplied, had not there arisen so early and so sharply the realization that no hope whatsoever existed for the safeguarding by the Courts of the most basic human rights, which have been incorporated into civilized legal systems as charters of freedom and public order. Whatever small minimal rights might still be claimed by Jews or "non-Aryans", however strong the evidence presented, or clear the terms of the laws to which appeal was made, the Courts of Germany have on racial grounds denied those rights, overlooked the evidence brought to sustain them, have, wherever possible, rendered the laws more harsh or have, wherever necessary, on their own authority filled the *lacunae* in the system of legislative discrimination.

Chapter IV

"UNWELCOME GUESTS"

The programme of the German Government which is designed to reduce "non-Aryans" to a condition of impoverished unemployment and to take away from them the most elementary civil and political rights does not stop at defining their position as that of "unwelcome guests" of the German people[1] and rendering their continued existence in Germany unbearable.[2] It requires that these "unwelcome guests" should be forced to leave their homes in Germany. That this is the ultimate purpose of the National Socialist Government is evidenced both by the legislation which has already been put into effect and by the official statements of its leaders. This intent has been reflected particularly in the denationalization imposed upon "non-Aryans" and others who have not found favour with the Government, in the imprisonment of returning refugees, and in the refusal to sanction any measures of retraining or re-habilitation of "non-Aryans" except those which would lead to their mass emigration.

Deprivation of Citizenship and Denationalization

"Non-Aryans", and those to whom the National Socialist State is opposed have, because of their origin or political views, been deprived of their German citizenship; and have, as refugees, been left virtually stateless and without the protection of the German Government. In addition, the denationalization of particular individuals (that is, the annulment of their German nationality) has been carried out on a large scale, and has taken two principal forms: the revocation of naturalization on racial grounds; and the withdrawal of nationality on political grounds.

Both deprivation of citizenship and denationalization are, for those within Germany, invitations to emigrate. The Law of September 15th, 1935, makes membership of the State contingent upon "German blood". Therefore, those of alien blood, particularly Jews, may not be members of the German community. Placed in a status approximating that of aliens, regarded as foreign to the German State, "non-Aryans" have been made to feel that because of their origin they have no place in Germany.[3] Furthermore, the denationalization of particular individuals leaves no doubt that the victims are henceforth to be regarded as aliens and therefore not even entitled to the diplomatic protection of the German State. A Law of July 14th, 1933, provides for the Withdrawal of Naturalization and the Loss of German Nationality in the following cases:[4]

(1) Where a person has been naturalized during the period between November 9th, 1918, and January 30th, 1933, and where his naturalization is now regarded as "undesirable" (Article 1);
(2) Where a German national, residing abroad, has "prejudiced German interests by an attitude contrary to his duty of loyalty" towards the Reich; or has refused to return when ordered to do so by the Minister of the Interior (Article 2).

The manner in which the decisive question of Article 1 is to be decided, namely, whether the naturalization of a person is regarded as "desirable", has also been set forth by law. The Acting Reich Minister of the Interior, Pfundtner, issued a decree on July 26th, 1933,[5] which declared that it should be determined according to "national racial" principles, and that in this connection the following were especially undesirable as German nationals:

(1) Jews from East European countries (Austria, Poland, Czechoslovakia, etc.), and
(2) Criminals, or those who have acted detrimentally to the welfare of the Reich or nation.[6]

The law also provides that denationalization shall likewise cancel the national status of members of the victim's family. In case of revocation of naturalization, the persons who would not have acquired nationality but for the act of the naturalized individual automatically lose their nationality together with him. For those whose nationality is withdrawn because of their alleged hostility abroad towards the National Socialist Government, it is to be decided in each case to what an extent this denationalization will apply to the spouse and legitimate or adopted children. Furthermore, their goods and property in Germany may be confiscated.

It should be remembered also, that the reasons for the withdrawal of nationality are not given to the party in question, and that recourse to law or to administrative tribunals to protest against a denial of right or an abuse of power is specifically prohibited.[7]

The number of individuals whose nationality is placed in jeopardy by this legislation, and who therefore face statelessness, is considerable. During the years 1919 to 1930, a total of 107,599 naturalizations took place. All of these individuals are thus within the purview of the law and in danger of losing nationality because their naturalization is now considered "undesirable". From 1919 to 1933, 10,300 individuals of Jewish descent and coming from East European countries were naturalized; the withdrawal of their nationality as a group is deemed especially desirable. Furthermore, the Law of July 14th, Article 2, places in jeopardy the nationality of all the 90,000 persons who have left Germany as refugees since June

[1] See p. 105.
[2] See Chapter II.

[3] Court decisions have emphasized that Jews are, according to German public law, only "guests" of the National Socialist State. See above, p. 123, for a decision of the Hamburg *Amtsgericht* on June 29th, 1935.
[4] *Reichsgesetzblatt*, No. 81, 1933, I, p. 480.
[5] *Ibid*, No. 87, 1933.
[6] i.e. those who oppose the National Socialist *régime*.
[7] Article 3 of the Law of July 14th.

1933, if they express opposition to the policies which caused them to flee from their homes.

Such denationalization, particularly for the East European Jewish class, inevitably results in statelessness. For, the nationality laws of practically every state in the world provide that after naturalization the loss of former nationality results and that no automatic resumption is possible.[8] This dire penalty has been imposed upon those naturalized Jews of East European origin both retroactively and solely by reason of their descent. No fraudulent intent, no subsequent act of crime or of bad faith, no deed of commission or omission need be adduced to justify the denationalization. The extreme vagueness of the law, permitting the withdrawal of "undesirable" naturalizations, is sufficient to cover all cases. This arbitrary, retroactive denationalization applies, furthermore, to individuals who in order to become naturalized had to pass severe tests of character and morality. The German Law on Nationality[9] required that the applicant for naturalization show that he "has led a blameless life" and that he is "able . . . to support himself and his family". In addition, this retroactive penalty is being imposed upon individuals who migrated to Germany following the war upon the strength of a solemn promise made by the Imperial Government of the German State. General Ludendorf in 1915 issued a proclamation to the Jews of Eastern Europe which induced many of them to take up their residence in Germany and to become naturalized. His statement "to the Jews of Poland" read, in part:

> "We come to you as friends; the barbarian foreign *régime* has ended. The equal rights of the Jews will be built upon a firm foundation. It is now your sacred duty to muster all your strength to help in the liberation."

Until September 1st, 1935, a total of 4,137 withdrawals of nationality had been announced and officially published in the *Deutsche Reichsanzeiger,* the official gazette. Of this number, 4,001 were revocations of naturalizations (particularly of Jews of East European origin and their families) on the basis of Article 1 of the Law of July 14th; and 136 were withdrawals of nationality from those who as refugees had written or spoken in opposition to the National Socialist Government. The following table illustrates the persistency with which this process is being carried out:

Period.	Article 1. *Total individuals.*	Article 2. *Wives and children.*	Total.	
1933				
August 25th	—	—	33	33
1934				
January-March	199	93	36	235
April-June	292	111	—	292
July-September	233	82	—	233
October-December	283	110	28	311
1935				
January-March	1,322	659	—	1,322
April-June	831	275	39	870
July-September	841	257	—	841
Totals	4,001	1,587	136	4,137

These denationalizations have averaged 172 per month; and in some months the figures have been as high as 797 (July, 1935), 425 (January, 1935), 445 (February, 1935), and 43[illegible] (March, 1935). The tendency during the past year has been for the number of denationalizations to increase. During the first nine months of 1935, for example, 2,944 denationalizations of individuals, principally East European Jews, took place; as compared with one-fourth of that number, viz. 742, during the same period of 1934. In fact, the average number of denationalizations per month in 1935 (first nine months) has been 335 whereas the average for 1934 (first nine months) was 87. It should be mentioned also, that in a great number of the cases of revocation of naturalization the victims were not born in countries of East Europe, nor had they been convicted of any crime.[10] Although born and raised in Germany their nationality was withdrawn because their parents were East European Jews. The 136 withdrawals of nationality from those alleged to have carried on activity outside of Germany hostile to the National Socialist Party have resulted also in the confiscation of the property (including libraries) of the victims.

The Intent of the Government

The fact that the discrimination imposed upon "non-Aryans" is merely an invitation to leave Germany and not a pattern for their existence there was made clear by the official National Socialist newspaper, the *West German Beobachter* on August 21st, 1935. It wished it "emphasized that by conceding Jewish activities within a Jewish community in various fields [i.e. in permitting "non-Aryans" to organize their own theatres and cultural life] Germany does not want to indicate that Jews may live in a specified manner within the state. There is another way recommended by every German and available to every Jew. It is 'Emigrate! Emigrate!'"

This intent of the National Socialist Government has received ample confirmation from official quarters. Thus, for example, the Reich Minister of Economics, Dr. Hjalmar Schacht, issued a decree in March, 1935, in consultation with the Reich Minister of Interior Frick, which declared that "any measure which promotes the emigration of Jews must be welcome".[11] Furthermore, as early as July 26th, 1933, the Reich Minister of Finance had published an order which stated that: "The emigration of persons of Jewish origin is desirable and must not, therefore, be prevented."

These unqualified expressions of official policy leave no doubt; they have been applied in the field of manual work to allow "non-Aryans" to carry on re-training only for the purpose of emigrating from Germany. As for students, the *Reichdevisenstelle,* in May, 1934, issued a circular permitting temporary emigration with a sum of money higher than that allowed by the exchange law where such a stay abroad would be highly desirable; this was particularly the case, the order ran, for "non-Aryan students whose studies in foreign countries may generally be considered as a desirable preparation for future emigration".[12]

Likewise, Reich Minister Rust has ordered that "non-Aryan" students may be granted permission to take examinations in

[8] The Polish Law of Nationality of January 20th, 1920, declares that "Polish citizenship shall be lost by acquiring foreign citizenship" (Article 11). The Austrian Law of July 30th, 1925, as well as the Nationality Laws of the other East European States, contain the same provision. See R. Flournoy and M. Hudson, *A Collection of Nationality Laws,* pp. 18-19.

[9] The German Law of July 22nd, 1913, may be found in Flournoy and Hudson, *op. cit.,* p. 307.

[10] The figures given above do not include those who were denationalized because they were alleged to have attempted to take their property out of Germany as refugees.

[11] *New York Times,* March 13th, 1935, p. 13.

[12] But, although emigration be encouraged, the Government does not want to lose a lucrative source of revenue in the tax placed upon emigration. As a result, even though the law requiring this emigrants' tax exempts from payment those whose emigration is in the interests of Germany, the Ministry of Finance refused to be bound by its previous encouragement of emigration of Jews as desirable. The tax must, it held, be paid. See above p. 124.

the universities only if they are able to prove that they contemplate emigration.[13]

The aim of the Government to drive "non-Aryans" from Germany has also been less directly indicated by the confinement of refugees who return to Germany in what are called "re-education camps". The official *Völkischer Beobachter* has confessed that the purpose of this incarceration is to prevent "non-Aryans" and other refugees from returning to Germany.[14]

The Refugee Problem[15]

Thus, having left no field of activity open to "non-Aryans", having taken from them their civil as well as political rights, forcing them to the desperate conclusion that the land to which they had given their life's energies and their wholehearted allegiance regarded them as outcasts and aliens, the National Socialist Government allows only one escape from the trap it has set: emigration. But even emigration is a desperate way out. For, it is only as penniless and virtually stateless that most "non-Aryans" may leave Germany to seek asylum elsewhere. If, on the one hand, their intolerable position forces them to seek escape at any cost, and if they are made to realize that their presence in Germany is no longer wanted, many are faced on the other with a no less terrible fate—the poverty and insecurity which awaits them as homeless refugees. Yet, despite these conditions, over 80,000 individuals have emigrated.

Approximately 20 per cent. of the refugees up to the present time have been professional workers: lawyers, doctors, teachers, scientists. Among the number of refugees, also, are 700 professors, scholars, and scientists, leaders in the academic life of Germany, including two Nobel Prize winners in science. 15 to 20 per cent. are non-Jewish by confession and forced to leave Germany either because of their ideas (as pacifists, members of political parties in the German Republic which have been proscribed by the National Socialist *régime,* Protestants and Catholics who have protested against certain pagan tendencies which their consciences forbade them to accept, trade union leaders and intellectuals who are regarded as unassimilable in the totalitarian state) or because they have been defined as "non-Aryans" according to the racial formula, though they may be Christians (that is, because they have a strain of Jewish ancestry or have married "non-Aryans").[16] The majority are small merchants, craftsmen, commercial agents, and clerks. Thousands are students who have been unable to continue their studies.

The majority originally took refuge in the countries of Europe immediately bordering upon Germany. France was at one time host to 30,000, and it is estimated that 20,000 of them have been sent on from there to other countries. In the Netherlands, 5,263 refugees were registered. Czechoslovakia also has given asylum for over 5,000 individuals. No less than 36,800 refugees had, by June 15th, 1935, gone overseas—to Palestine, the United States, South America, and South Africa.

Perhaps at no time in history have conditions been less favourable to the settlement of such a difficult international problem. The severe and lingering economic depression has made recovery by the creation of new employment opportunities the chief preoccupation of Governments. The lands of immigration which once needed and encouraged the influx of foreign workers are closed. Commerce and the professions, the two main occupations of the refugees from Germany, find themselves especially in a state of contraction rather than of expansion.

The economic condition of the refugees from Germany is made doubly worse by the requirements relative to emigration imposed by the National Socialist Government. The German currency laws render it impossible for emigrants to take their property with them, and result in practical confiscation of the property by the Government. The *Reichdevisenstelle* demands from refugees a sum amounting to 25 per cent. of their property in Germany as a *Reichsfluchsteuer* (emigration tax).[17] But, even the 75 per cent. remaining has to be left in Germany as so-called *Sperrmarks* which in foreign countries are worth even less than 30 per cent. of their face value.[18] Thus, at most, only one-fifth of a refugee's property and savings in Germany is allowed him; four-fifths of it is taken directly or indirectly by the National Socialist Government. In actual fact, moreover, even this one-fifth is not realized. For, the value of the property owned by "non-Aryans" and other potential emigrants within Germany has been brought down by the boycott and the forced liquidation of "non-Aryan" business which is encouraged by the Government. Thus, prospective emigrants are induced to sell their property at a figure far below its real value, and are only able to retain one-fifth of the already reduced sum. This process of governmental expropriation has rendered the economic condition of thousands of refugees one of dependency and forces them to seek charity and assistance. Eventually, and after they have exhausted their slim resources, they will increasingly be forced to become dependent upon relief.

But, their legal position is even more precarious. Over 4,000 individuals have had their nationality withdrawn by the German Government since January, 1934,[19] and most of them are residing as stateless refugees, subject to constant insecurity and even expulsion in countries outside of Germany. Thousands more are stateless without denationalization. Still thousands more are without German passports, though they be German nationals. And even those who still retain valid German passports and possess German nationality are virtually stateless because of the refusal of the German consular and diplomatic authorities to grant them the necessary papers or protect them as Germans. In numerous instances, moreover, their passports have been confiscated by the German consular authorities. As a result, a large proportion of the refugees from Germany are deprived of the most elementary rights of security, and are subject to the fear and danger of expulsion at any time. Many are considered to be illegally within their countries of refuge, and at the same time it is impossible for them to leave for another without violating the law. If a notice of expulsion is issued, they face either the prospect of returning to Germany, from whose intolerable persecution they have fled, and where they will be placed in concentration camps,[20] or being cast into prison upon their expulsion for illegal entry into a country other than Germany, or evading the expulsion order and thereby becoming subject to imprisonment as criminals.

The psychological and spiritual effects of these conditions can hardly be over-stated. The number of suicides, the distortion of minds and the breaking down of bodies, the deaths of children through malnutrition—are tragic witness to these consequences.

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[13] *Frankfurter Zeitung,* May 17th, 1934.

[14] Issue of March 9th, 1935.

[15] See, for more detailed information, the forthcoming study by Prof. Norman Bentwich: *The Refugees from Germany,* 1933-5.

[16] See p. 107.

[17] See p. 124, where the decision of the German Supreme Court of Finance requiring this tax, although the emigration of Jews was regarded as in the interest of Germany, is described.

[18] Special arrangements permit the transfer of a higher amount for refugees going to Palestine or Italy.

[19] See p. 126.

[20] See first column on this page.